

CITY GOVERNMENT
in the United States

CITY GOVERNMENT in the United States

REVISED EDITION

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UNIVERSITY OF ILLINOIS



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CITY GOVERNMENT IN THE UNITED STATES,
REVISED EDITION

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Preface to the Revised Edition

Times change and with them the problems of city government. When the first edition of this book was published in 1934, the country was in the midst of a depression which created special problems for local governments. With the coming of World War II, new problems arose. Following the attack at Pearl Harbor, the paramount question became the winning of the war; but local governments occupy an important place in a war in which the production of materials plays such an important part as it does in modern warfare. With the surrender of Japan in 1945 and the end of World War II, our cities faced the problems of the postwar period. Among these were the absorbing of personnel returning from military service; strikes of government employees; financial problems, especially the securing of adequate revenues; housing; and the carrying out of delayed public works construction programs. Whether it be a period of prosperity or of depression, of peace or of war, the city is one of our most important governmental units. Political, social, and economic problems which arise have their impact upon local governments; and local governments have their part to play in meeting these problems.

In the preparation of this revision, extensive changes have been made to deal with new problems which have arisen and developments which have taken place. Two chapters of the first edition have been combined (IV and V). The chapter on Administrative Organization and Operation has been expanded into two chapters—one on Administrative Organization and the other on Personnel Administration. A chapter on Village Government and three chapters on financial administration have been added. Some rearrangement of the material within chapters and of the order of chapters has been made.

The advice of my colleagues, John A. Fairlie, Clyde F. Snider, and

Charles B. Hagan, and of Patterson H. French, Bureau of the Budget, Executive Office of the President, has been helpful. Richard C. Spencer of the Governments Division of the Bureau of the Census has cooperated by providing information on the work of that agency in the field of local government. Clarence E. Ridley, Executive Director of the International City Managers' Association, has furnished recent figures on the council-manager plan of government. Miss Dorothy Thompson, Production Editor of the College Department of Harper & Brothers, has suggested several changes which have improved the manuscript and has assisted in seeing the book through the press. To the many persons who, on the basis of their use of the first edition, made suggestions as to additions, omissions, or other changes, I am grateful.

CHARLES M. KNEIER

January 1, 1947

The Growth of Cities in the United States

The urbanization of this country presents one of the most important political and governmental problems of our day. Manifold and complex are the questions which have developed with the urbanization of the country. Where a number of people congregate together in an urban area, needs arise which can be met only by united cooperation and action. Needs which are individual in a rural community become common problems in the urban area. The disposal of sewage and wastes and the providing of a water supply are met by the individual in the country; in the city they are problems which require common action of the whole community.

Problems which do not exist in a rural section, or if they do exist, then to a minor degree only, become questions of great importance in an urban area. The massing of people together in compact communities—urban areas or cities—accentuates the difficulties of health administration, sanitation, law enforcement, housing, fire protection, and transportation. The resulting problem is in many respects more complex and of greater magnitude than that which must be met by any other governmental authority.

When Washington was inaugurated President of the United States in 1789, Philadelphia, the largest city in the country, had a population of 42,000; the population of New York was 33,000; and Boston had a population of 18,000.¹ In 1790 there were 131,472 persons living in the six cities having a population of 8000 or more;² this was 3.3 per cent of the total population of the country, which

¹ *A Century of Population Growth* (1790-1900), published by the Bureau of the Census in 1909.

² Though the Census Bureau includes Salem as one of the six cities having over 8000 population, in 1790 it had only 7921 inhabitants.

2 City Government in the United States

was 3,929,214. In 1940 there were 1077 cities of over 10,000 population, in which 47.5 per cent of the American people lived.

The high degree to which the country has become urbanized is even more striking if we also consider those persons living in smaller cities and villages. In 1940, 56.5 per cent of the population of the United States lived in the 3464 cities of 2500 population or above. But in the 13,288 incorporated places of less than 2500 population, 7.1 per cent of the people lived; this left but 36.4 per cent of our people rural, with 63.6 per cent living in incorporated cities, villages, towns, and boroughs.

There are scattered throughout the United States numerous unincorporated hamlets, outnumbering in some states the places which are incorporated. The number of unincorporated places having a population of 250 to 2500 has been estimated at over 8000, with an aggregate population of over 4,000,000.³ If we add this

POPULATION IN GROUPS OF CITIES CLASSIFIED ACCORDING TO SIZE, 1940⁴

| | Number of Places | Population | Per Cent of Total Population |
|--|------------------------|------------|------------------------------------|
| Urban territory | 3,464 | 74,423,702 | 56.5 |
| Places of 1,000,000 or more | 5 | 15,910,866 | 12.1 |
| Places of 500,000 to 1,000,000 | 9 | 6,456,959 | 4.9 |
| Places of 250,000 to 500,000 | 23 | 7,827,514 | 5.9 |
| Places of 100,000 to 250,000 | 55 | 7,792,650 | 5.9 |
| Places of 50,000 to 100,000 | 107 | 7,343,917 | 5.6 |
| Places of 25,000 to 50,000 | 213 | 7,417,093 | 5.6 |
| Places of 10,000 to 25,000 | 665 | 9,966,898 | 7.6 |
| Places of 5000 to 10,000 | 965 | 6,681,894 | 5.1 |
| Places of 2500 to 5000 | 1,422 | 5,025,911 | 3.8 |
| Rural territory | | 57,245,573 | 43.5 |
| Incorporated places of 1000 to 2500 | 3,205 | 5,026,834 | 3.8 |
| Incorporated places under 1000 | 10,083 | 4,315,843 | 3.3 |
| Other rural territory | | 47,902,896 | 36.4 |

³ C. L. Fry, *American Villagers*, p. 26; J. A. Fairlie and C. M. Kneier, *County Government and Administration*, p. 495.

⁴ Bureau of the Census, *Population*, vol. 1, p. 25 (1940). On the number of units of government, see William Anderson, *The Units of Government in the United States* (1945); Bureau of the Census, *Governmental Units in the United States*, 10.12 (1944).

to the population living in incorporated places, it brings the total urban population to 89,000,000, or over 67 per cent of our people living under urban or semi-urban conditions.

There has been not only this movement to cities, but a tendency to congregate in large cities. In 1850 there was only one city, New York, with a population of over 500,000; and only five others had 100,000 or more.⁵ By 1940, however, there were five cities of over 1,000,000 population; nine others with over 500,000; and 78 others having over 100,000. Thus by 1940, approximately 30 per cent of the population of the country was concentrated in 92 cities. The 37 cities having a population of 250,000 or more contain almost one-fourth of the population of the country. The five cities having a population of 1,000,000 or more each, had a combined population of 12.1 per cent of the total population of the country. The 140 metropolitan districts, or areas surrounding cities having a population of 50,000 or over, had a total population of over 62,000,000. This was 48 per cent of the total population of the country. In these districts lived 84 per cent of the urban population of the country.⁶

In 1940 New York City, with its population of 7,454,995, was exceeded by only three states—New York, Pennsylvania, and Illinois. Only 12 states, including Illinois, had a population greater than that of the city of Chicago. Los Angeles, our fifth city in size in 1940, exceeded in population 18 states. There were at that time 80 cities having a population greater than that of our least populous state, Nevada, with its 110,247 people.

RECENT TRENDS IN URBANIZATION IN THE UNITED STATES

The 1940 census revealed a slowing down in the urbanization of the United States. The urban population increased 7.9 per cent in the period 1930-40, while the rural increase was 6.4 per cent. The rate of rural increase during that decade was more rapid than in the previous ten-year period (6.4 per cent, 1920-30, as compared with 4.4 per cent, 1920-30), but the rate of urban growth has

⁵ New York, 515,547; Baltimore, 169,054; Boston, 136,881; Philadelphia, 121,376; New Orleans, 116,376; Cincinnati, 115,435.

⁶ *You and Your City*, published by the United States Conference of Mayors (1946), pp. 12-15.

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shown a marked decrease (27.3 per cent in the period 1920-30, as compared with 7.9 per cent in the period 1930-40). During the period 1920-30, the rate of urban growth was more than six times the rate of rural growth (27.3 per cent for urban as compared with 4.4 per cent for rural), but in the period 1930-40, the rate of increase was approximately the same for both urban and rural population (7.9 per cent for urban and 6.4 per cent for rural).

URBAN POPULATION OF THE UNITED STATES, 1930-40⁷

| <i>Subject</i> | <i>Total</i> | <i>Urban</i> | <i>Rural</i> |
|-------------------|--------------|--------------|--------------|
| Population, 1930 | 122,775,046 | 68,954,823 | 53,820,233 |
| 1940 | 131,669,275 | 74,423,702 | 57,245,573 |
| Per cent of total | | | |
| 1930 | 100.0 | 56.2 | 43.8 |
| 1940 | 100.0 | 56.5 | 43.5 |
| Increase, 1930-40 | | | |
| Amount | 8,894,229 | 5,468,879 | 3,425,350 |
| Per cent | 7.2 | 7.9 | 6.4 |
| Increase, 1920-30 | | | |
| Amount | 17,064,426 | 14,796,850 | 2,267,576 |
| Per cent | 16.1 | 27.3 | 4.4 |

In 1940 there were 37,987,989 persons living in the 92 cities which had a population of 100,000 or more. These cities showed an increase in population of 5 per cent in the decade 1930-40, as compared with a 23.7 per cent increase for the same cities in the period 1920-30. The number of cities having a population of over 100,000 dropped from 93 to 92, there being two newcomers to the group and three which were formerly in the list dropping below the 100,000 mark. Only one city in this group, Washington, D. C., grew more rapidly in the period 1930-40 than in the previous decade.

The marked decline in the rate of urban growth in the period 1930-40 has two aspects. First, it is a reflection of a general slowing down of our population increase, both urban and rural. The national increase, including both urban and rural, was less than one-half as great in the period 1930-40 as in the previous decade. Immigration

⁷ Bureau of the Census, Press Release, Jan. 18, 1941; Bureau of the Census, *Population*, vol. 1, p. 25 (1940).

practically ceased during this period; gross immigration was small and net immigration was a minus quantity.⁸ Second, the march to the cities at the expense of rural regions has slowed down to a striking degree.

The depression retarded the movement of population from rural to urban areas, and unfavorable economic conditions probably reduced the rate of natural increase. While peculiar economic conditions may account in part for the slowing down of urban growth in this period, it is generally agreed that in the future there will be a slowing down in the rate of increase for both cities and the country as a whole. Estimates of future population put the number at about 153,022,000 in 1980, with an absolute decrease in the number of persons living in the United States in the decade 1980-90.⁹

URBANIZATION IN OTHER COUNTRIES

It should be noted that this urbanization movement is not peculiar to the United States. The concentration of population in large cities is also taking place in other countries. At the outbreak of World War II about 80 per cent of the population in England and Wales was urban, as was over 50 per cent in Germany and just under 50 per cent in France. One-fifth of the population of England and Wales was in London; the six capitals of Australia had almost 50 per cent of the total population of the country; Buenos Aires had about one-fifth of the population of Argentina; and Montevideo had almost one-fourth of the population of Uruguay. Berlin and Paris had become towering giants.¹⁰ The war changed the normal pattern

⁸ *Ibid.*

⁹ Bureau of the Census, Press Release, July 23, 1941. For an interesting estimate of the population of the United States by ten-year periods up to 1975, the data being given separately for urban and rural populations, see P. K. Whelpton, "Population of the United States, 1925-1975," 34 *Am. Jour. of Sociology* 253 (Sept., 1928). Also see President's Research Committee on Social Trends, *Recent Social Trends*, vol. 1, chap. i, pp. 46-51. (This report will be referred to hereafter as *Recent Social Trends*.) For a discussion of the possible methods and advantages of forecasting the future population of a particular city, see Fred H. Sterns, "Methods of Forecasting Future Population," 12 *Pub. Management* 545 (Nov., 1930).

¹⁰ J. G. Thompson, *Urbanization*, preface; M. R. Davie, *Problems of City Life*, p. 10.

of urban-rural population distribution in practically all countries, and also the situation relative to individual cities, especially in countries where actual combat (including bombing) took place.

CAUSES OF CITY GROWTH

The question arises as to the causes of this urbanization movement. It is necessary to distinguish the causes of urbanization and the things which have made it possible. Improvements in medicine, in methods of disposal of sewage and wastes, and in transportation were necessary before we could have urbanization to an extensive degree, and more particularly before we could have such great cities as New York and Chicago. These, however, rather than being the causes of city growth, are the factors which have made such growth possible.¹¹

There is little, if any, relation between the density of population and the degree of urbanization to which a country has been carried. India, Italy, and Japan are densely populated countries but they are not highly urbanized. The United States and Australia, on the other hand, though thinly populated, have large urban populations.¹² Japan with a population density of 403 persons per square mile has less than 15 per cent of her people living in cities of over 100,000 population, and India with a population density of 177 per square mile has less than 4 per cent of her people living in such cities. The United States with a population density of 44.2 persons per square mile has over 25 per cent of her people living in cities having 100,000 or more inhabitants.¹³

Natural increase, or the excess of births over deaths, has not been an important factor in the increase of the urban population of the United States, and it appears that it is becoming of diminishing importance because of the declining birth rate, especially in cities. Future urban growth will not be the result of natural increase—the excess of births over deaths. Rather must the cities depend upon external growth—upon migration from the farm or upon foreign immigration. In 1941 the Bureau of the Census issued

¹¹ A. F. Weber, *The Growth of Cities in the Nineteenth Century*, chap. iii.

¹² *Ibid.*, pp. 5, 146-147.

¹³ S. Vere Pearson, *The Growth and Distribution of Population*, p. 216.

a statement saying: "The American urban population will decline about 24 per cent per generation if present birth and death rates continue and if there is no migration in from rural areas. . . . In contrast, the rural-farm areas will increase about 36 per cent per generation if present fertility and mortality conditions continue, and the rural-nonfarm areas will increase about 16 per cent. Unless current fertility trends are radically altered, future increase in urban population will eventually be entirely dependent upon migration from rural regions."¹⁴ As stated in a study of the public health factor and urbanization, "In 1940 the reproduction rate of the rural-farm population as a whole was twice as high as that of the urban population. This means that the cities lacked 26 per cent of maintaining their populations without immigration, whereas the rural areas had an excess of 59 per cent over what was necessary for the permanent replacement of their populations."¹⁵ It is clear that the rate of reproduction of our urban population does not account for city growth.

The important causes for the growth of cities are economic. It is the economic factor which accounts for the migration of people from the farm to the city. The divorcement of people from the soil accounts in large part for the growth of cities. This is part of the specialization movement which has been going on in this country. When the village miller, weaver, or shoemaker began to perform services which were formerly carried on by each individual for himself, we had the beginning of specialization in production. As stated by Ralph L. Woods, "Our modern cities of commerce, manufactures, finance, and trade date from the time when agriculture began to produce a surplus and the machine struck at the self-sufficient life through the introduction of specialization."¹⁶

As long as it was necessary for all the people to till the soil in order to feed the population, urbanization could not proceed far. Only where, because of either unusually fertile soil or improvement in methods of agriculture, less than the whole of the population is needed to produce the food supply can we expect urban-

¹⁴ Bureau of the Census, Press Release, Feb. 21, 1941.

¹⁵ Elmer T. Peterson (ed.), *Cities Are Abnormal*, p. 97.

¹⁶ Ralph L. Woods, *America Reborn: A Plea for Decentralization of Industry*, p. 3.

ization to proceed. This divorcement from the soil accounts in large part for the urbanization movement in this country. By 1898, Weber could report that through the use of fertilizers, crop rotation, new methods of cultivation, and labor-saving machinery we had "immensely reduced the relative number of workers who must remain attached to the soil to provide society's food supply."¹⁷

Another writer, in a book published two decades ago, said:

In the time of Nero, with the crude tools at his command, a Roman slave spent the equivalent of three days of irksome toil to produce a bushel of wheat. With more modern agricultural appliances, in the days of Abraham Lincoln, it was possible for the farmer to accomplish this feat in three hours. Today, thanks to the genius of the McCormicks, Stephensons, Fords, and other master minds, with the aid of binders, steam thrashers, gasoline tractors and quick communication the same work may be done by one man in ten minutes.¹⁸

Divorcement from the soil continues. Each decade fewer of our people are required to till the soil to produce the food supply.¹⁹

These people have congregated in cities to carry on the process of specialization, which has been referred to above as having its origin in the village weaver, miller, and shoemaker. Where the farmer formerly made his own tools, he was now buying implements from the person in the town who specialized in this work. This specialization led to such improvements as the reaper, the gang plow, and finally to power-driven machinery. These improvements divorced others from the soil who came to the city to make machinery to be used in farm production.

Gradually new human wants developed which were not satisfied by food products. The desire for music and recreation led to the production of musical instruments, such as the primitive organ. The business of producing goods to supply these wants had been separated from agriculture. The "commercial metropolis of today is the successor of the primitive market place." Manufacturing or industry as part of the process of specialization and division of labor

¹⁷ A. F. Weber, *op. cit.*, pp. 161-162.

¹⁸ J. B. Arp, *Rural Education*; quoted in H. S. Hicks, *The One-Room Schools of Illinois*. Also see R. H. Holmes, *Rural Sociology*, p. 158.

¹⁹ For a critical evaluation of the view that mechanization has, by reducing the need of manpower on the farms, been a cause of urbanization see Elmer T. Peterson (ed.), *op. cit.*, p. 160.

thus becomes the second important economic factor in the growth of cities.²⁰

The development of cities at points where trade routes are broken is illustrative of the importance of this factor in city growth. The transfer of goods from land to water required labor, and around the point of transshipment the city developed. Where there was a change in ownership, and especially a change in form, as from raw products to manufactured goods, industry developed, such as storage elevators, warehouses, and manufacturing plants.

Improvement in methods of transportation is a third factor in the urbanization movement, and more particularly in the growth of larger cities. Improved transportation means the extension of the potential market, and this in turn leads to the enlargement of the market center or manufacturing city. When, because of poor methods of transportation, trade was confined to the town and its surrounding country, commercial cities could not become large. Milling, weaving, and shoemaking under such conditions remain localized and on a small scale. Improved transportation made possible the development of the large-scale factory system with its high degree of specialization or division of labor.²¹

As the early village miller, despite his primitive methods, was able to produce meal and flour more efficiently than the individual farmer, so the manufacturer in the large city has had an advantage over the one in the small city.²² This large-scale production was possible, however, only when methods of transportation had been improved. The city was thus "built up by grace of the twin gods railroad and coal." The importance of this factor in the growth of cities has been summarized as follows:

If you measure efficiency by lowered cost of production, it is more efficient to have a comparatively few large cities and a comparatively few specialized agricultural regions, exchanging their products over comparatively large areas, than to have a large number of self-sufficing rural communities of the old type each with its local industries. This is what chiefly accounts for city growth and farm decay. It is part of the great

²⁰ A. F. Weber, *op. cit.*, p. 160.

²¹ *Ibid.*, pp. 160, 163, 172.

²² There is some question as to whether this is true in the case of very large cities. This will be discussed at greater length in the following section on intercity migrations.

process of division of labor, diversification of wants, and centralization of control. If the cities are to stop growing, and the land is to have more of a chance, something must happen to make the city less efficient.²³

The assembly-line technique and the use of complicated machinery that would be too expensive for any but large-scale producers results in huge plants, and these contribute greatly to urban growth. This urban growth comes partly from the large number of workers employed in the plants; but the employer's belief that it is desirable to locate in cities so as to have a steady and sufficient source of labor, good transportation facilities, and the other advantages offered is the fundamental factor.

In addition to the economic factors just discussed, there are certain social factors which account for the migration of people to cities from rural areas. Advantages or opportunities for education, for amusement, and for intellectual association are illustrative of these social factors. While they are motives which induce some people to go to cities, they do not seem to be significant in a study of the primary causes of city growth. The great majority of the people who migrate to the city do so not so much to live as to make a living. The so-called appeal of the city for the young man or woman reared in the country has not been, however, entirely economic. There is in many cases an intangible lure of the city, but the chief motivation is to live in a way which they consider better than is possible on the farm. And their test of better living is economic.

Immigration has also been a factor in city growth. The economic factors discussed above which account for the migration of people from rural areas to cities, also account for the tendency of immigrants from foreign countries to settle in cities rather than to go to the farms. The tendency of immigrants to settle in our cities is even more pronounced than the cityward shift of our native rural people. There are various reasons why the cities receive a greater percentage of our immigrants than do the rural areas. It is in the cities that they land, and money is necessary to get away. While the opportunities for foreign labor on farms are limited, greater opportunities are offered in the city. There is an opportunity of being

²³ George Soule, "Will the Cities Ever Stop?" 47 *New Republic* 105 (June 16, 1926).

with others of their own race, and consequently knowledge of our language is less essential. As in the case of those who migrate from the farms to the city, the excitement and novelty of our cities are attractions to our foreign-born.²⁴

The policy which has been adopted in this country of restricting foreign immigration more closely means that this factor will in the future be of less importance in the growth of cities. Even though all immigrants now admitted to the country were to go to the cities, it would not be an important factor in the further growth of cities.²⁵ As pointed out above, net immigration was a minus quantity during the decade 1930-40, the number leaving the country exceeding those entering.

INTERCITY MIGRATIONS

*Within Metropolitan Areas*²⁶

There are certain intercity migrations which are significant in a study of city government, and more particularly of the urbanization movement. The first is the development of the suburban or satellite city. Two types of suburban cities have developed—the residential and the industrial. In the period 1920-30 suburbs in metropolitan areas grew more rapidly than did the central cities around which they had developed. The 1940 census reports show that this situation continues. Cities containing 100,000 or more population have increased less rapidly during the decade 1930-40 than have the counties in which they are located. The increase has been in the suburban cities and villages, the satellites of the central core city. The tendency for the population to settle outside the core city in metropolitan areas, either in incorporated suburbs or in unincorporated territory, is shown in the accompanying table for seven metropolitan areas.

²⁴ H. P. Fairchild, *Immigration*, pp. 225-231.

²⁵ In 1931 the number of immigrant aliens admitted was only 43,000, whereas 89,000 emigrant aliens left the country. *Recent Social Trends*, vol. 1, chap. i, pp. 38-39.

²⁶ Decentralization is used in this discussion to include the suburban trend in metropolitan communities as well as the movement of population to smaller cities and towns outside the metropolitan areas. The former might be considered as deconcentration and the latter as decentralization.

INCREASE IN THE POPULATION OF METROPOLITAN DISTRICTS, 1930-40²⁷

| <i>Metropolitan District</i> | <i>Per Cent Increase in Population, 1930-1940</i> |
|------------------------------------|---|
| New York—Northeastern New Jersey | 7.2 |
| New York Division | |
| New York City | 7.6 |
| Outside city | 18.6 |
| New Jersey Division | |
| In central cities | -3.1 |
| Outside central cities | 5.2 |
| Chicago Metropolitan District | 3.1 |
| Chicago city | 0.6 |
| Outside city | 11.5 |
| Philadelphia Metropolitan District | 1.8 |
| Philadelphia city | -1.0 |
| Outside city | 7.9 |
| Los Angeles Metropolitan District | 25.3 |
| Los Angeles city | 21.5 |
| Outside city | 29.6 |
| Cleveland Metropolitan District | 1.7 |
| Cleveland city | -2.5 |
| Outside city | 14.3 |
| Baltimore Metropolitan District | 10.3 |
| Baltimore city | 6.7 |
| Outside city | 29.9 |
| St. Louis Metropolitan District | 5.8 |
| St. Louis city | -0.7 |
| Outside city | 17.0 |

A study of all metropolitan districts reveals that between 1930 and 1940 the areas outside the central cities grew more than three times as fast as the central cities.²⁸

The growth of residential suburbs can be accounted for by the desire on the part of people to live under more comfortable conditions. As Lewis Mumford says, "The suburb is a public acknowledgment of the fact that congestion and bad housing and blank

²⁷ Compiled from Bureau of the Census, Press Releases, 1940-1941. Also see Bureau of the Census, *Internal Migration, 1935-1940* (1943).

²⁸ Elmer T. Peterson (ed.), *op. cit.*, p. 62.

vistas and lack of recreational opportunity are not humanly endurable. The suburbanite is merely an intelligent heretic who has discovered that the mass of New York or Chicago or Zenith is a mean environment."²⁹ He desires to escape from smoke, dirt, and noise.

The exodus to the suburbs may be accounted for by the fact that, to many people, the suburbs provide not only a more pleasant way of life but a cheaper one.³⁰ Land values and consequently housing sites generally cost less. Unreasonably restrictive building codes often make construction costs prohibitive in the large city, and people find it cheaper to build a home in the suburbs. Tax rates in suburbs are in most cases lower than in the central city. The resident of the suburbs thus feels he is getting a better place in which to live for less money.

Another reason advanced to explain the suburban trend is the absence or shortsightedness of city planning. Adequate parks and neighborhood playgrounds have not been provided to make the city an attractive place in which to live. Residential areas have been inadequately restricted by zoning ordinances; and with the encroachment of undesirable types of buildings, residents escape by going to the suburbs.

Industrial satellite cities are also being developed. Manufacturers are finding it advantageous to locate their plants outside great cities.³¹ As is the case of individuals, industry often leaves the central city to avoid high taxes. As a result of lower living costs, labor may be secured at a lower wage. Labor is generally less thoroughly unionized and consequently labor difficulties are less burdensome. New governmental policies, such as legislation on minimum wages and maximum hours and on collective bargaining, and increased activity by labor unions, even in smaller cities, have tended to remove this advantage.³²

²⁹ Lewis Mumford, "The Intolerable City," 152 *Harper's Magazine* 283 (Feb., 1926).

³⁰ For a listing of six causes for the movement of people from central cities to suburbs, see editorial comment entitled "Decentralization in Urban Areas," 22 *Pub. Management* 225 (Aug., 1940).

³¹ R. M. Haig, "Toward an Understanding of the Metropolis," 40 *Quarterly Jour. of Economics*, 179, 402 (Feb., May, 1926).

³² Louis Wirth, "Effect of Recent Social Trends on Urban Planning," 27 *Pub. Management* 10 (Jan., 1945).

A factor, rather than a cause, in the development of the suburb has been the increase in the number of automobiles, the improvement of arterial streets and highways, and the development of rapid transportation facilities to the suburbs. They have made it possible for the man who works in the central city to use the suburb as his bedroom. While the time spent in going to and from his work may still be large, it has been greatly reduced by modern methods of transportation. And on the basis of our experience with the development of suburbs, he seems to feel that suburban life is worth the time and effort spent.

A transfer of population growth from large cities to suburbs might seem to be on the whole a desirable change. But while there are some advantages in the suburban trend, tending as it does to lessen congestion and crowding, there are also disadvantages. One is the creation of new city governments, resulting in a myriad of governmental authorities where common, united action is needed. We must also consider that a spreading out of the population in a metropolitan area means a greater per capita cost for supplying certain services. The capital outlay for sewers, water supply, streets, and transportation is greater than it would be if the population were more concentrated. It is part of the price we must pay to secure the advantages resulting from a diminution in the intensity of concentration in metropolitan areas.

The decentralization trend in metropolitan areas presents serious problems for the core or central cities.³³ Among the most troublesome is that of finance. The cost of governing the central city has not decreased proportionately to its loss of revenues resulting from the suburban trend. The central cities have constructed public improvements on the basis of a future growth in population. The debts for many of these remain unpaid, and the burden on those who continue to live in the city becomes heavy. Tax delinquency resulting from vacant lots and houses and the shrinking of property values—the fruit in large part of the exodus to the suburbs—has become a serious problem in many of our metropolitan areas.

The question arises as to what can be done by the central cities

³³ See C. E. Merriam, "Emigration Causing Disintegration of Large Cities," 11 *Pub. Management* 658 (Dec., 1929); Philip H. Cornick, "New Exodus to Suburbs Near," 35 *Nat. Mun. Rev.* 4 (Jan., 1946).

to check this migration of their residents to the suburbs. The answer would appear to be to study the causes and then, insofar as possible, to remedy the situation. An editorial comment a few years ago in *Public Management*, after listing the causes of the exodus to the suburbs, concluded that "the attack on the problem must be led by our city governments. Each major factor involved is to a large extent a governmental problem and can be handled most effectively by all the people acting through their local governing body. Simply stated, if people are to live in cities our cities must be made more livable."³⁴

The central core cities often furnish sewer and water service and fire protection to suburban communities. The rates charged for water and sewer service have frequently not been sufficiently high to penalize those who have left the city to escape high taxes. They have thus been able to secure the advantages of some municipal services without paying the cost of maintaining a city government. Several central core cities have in recent years realized that in effect they have encouraged the development of satellite communities. Saint Paul, Minnesota, may be cited as an illustration. In the period 1930 to 1940, the population of the city increased 6 per cent while the adjacent rural area increased 68 per cent. This development outside the city took place, even though there were 60,000 building lots available for residences in the city. In 1946, a special committee studied the facilities of the city made available to outside communities. It was found that the charges made for outside services "have always been lower than costs to property of equivalent value within the city if placed on an ad valorem basis of taxation." The committee recommended that no further extension of water and sewer service be made outside the city, and that for service already undertaken the rates be equal to or higher than those charged in Saint Paul. They further recommended that a charge be made for fire protection service outside the city, with all such service to be discontinued after the expiration of a reasonable period in which the communities must provide their own fire protection. As stated by the director of the Saint Paul Bureau of

³⁴ 22 *Pub. Management* 225 (Aug., 1940); also see 23 *ibid.* 65 (Mar., 1941); P. M. Hauser, "How Declining Urban Growth Affects City Activities," 22 *ibid.* 355 (Dec., 1940).

Municipal Research, the recommendations of the committee "are based on the belief that any encouragement through the use of city facilities should be for development within rather than outside the city."³⁵ Other cities may well consider their policies relative to furnishing municipal services outside the city.³⁶ It is obviously unfair to property owners and taxpayers in the city, especially to the owners of vacant lots, to encourage the development of suburban communities by furnishing essential services at too favorable rates. If such services are furnished, the rates should be sufficiently high to counteract the low tax rate motive in going to the suburbs.

The Philadelphia, Toledo, and St. Louis income tax plans will be considered in a later chapter.³⁷ In the present discussion, however, it should be noted that they now tax income earned within the city, including that earned by non-residents. They have thus found a means of making the resident of the suburb who comes to the central core city to make his living also support and pay for its municipal services. Under such a plan, no longer can the suburbanite enjoy the benefits of the central city's police, fire, street, health, and other services without making his contribution. It is a step in the direction of removing one of the economic motives for developing suburbs—lower taxes. No longer can the suburbanite entirely escape his responsibility in carrying the burdens of the central city.

In the preceding paragraphs the difficulties for the central core city resulting from migration to the suburbs have been stressed, and possible methods of checking this movement have been presented. An alternative approach to the question would be to secure a better method of operating a deconcentrated city. This would involve a better distribution of governmental costs and functions among the different parts of the metropolitan area, as well as a reduction in the number of governmental units. Some blighted areas have resulted not from deconcentration alone but because they

³⁵ Carl P. Herbert, "What Price Aid to Suburbs?" 35 *Nat. Mun. Rev.* 280 (June, 1946).

³⁶ The prevailing practice is to charge higher rates for outside utility service. See John Bauer, "City Utilities Serve Neighbors," 33 *Nat. Mun. Rev.* 342 (July, 1944).

³⁷ See chap. xxix.

are socially and economically unsuited for business or residence purposes. To attempt to use such areas for their old purposes would be a mistake. If they are used for parks and playgrounds there must either be deconcentration of the population or taller skyscrapers, bigger apartment houses, or more congested homes. The problem of governing a metropolitan area with a deconcentrated population will be discussed in a subsequent chapter.

Another type of migration has developed. Not only has there been this movement of the population from the central core city to the suburbs, "but the suburbanites are moving to the rural sections." These people who have moved out into rural areas have not incorporated as suburbs but have depended on the county and the township for needed governmental services. In 1940 the Census Bureau reported that there were 3594 unincorporated communities in the United States having a population of 500 or more. The inhabitants of these unincorporated, densely populated communities have been referred to as "rurbanites" and the areas they occupy as "rurban areas."³⁸

The movement of people from cities into adjoining rural areas seems to be accounted for primarily by a desire to escape city taxes. People are willing to forego municipal services in return for a low tax rate. There are, however, other factors which account for this population movement. Low costs of building sites is another incentive. Some have moved outside in order to escape the rigid requirements of building codes and zoning restrictions. Finally, some wealthy persons build outside cities so as to have more space and "elbow room."

As the density of population in these unincorporated areas increases, problems will arise which must be met by some unit of government, or conditions will become intolerable. If people are massed together, even in so-called rural areas, added precautions must be taken in the fields of health, law enforcement, and fire protection. If a city is not incorporated for this purpose, then these services must be provided by the county or township. Their tax rates must inevitably be increased to provide these services. Special *ad hoc* districts may be established to provide a water

³⁸ John A. Perkins, "Government of 'Rurban' Areas," 37 *Am. Pol. Sci. Rev.* 306 (Apr., 1943).

supply, dispose of sewage, pave streets, provide parks, or maintain police and fire services. If this method is used, again there is the cost to be met and it is reflected in higher taxes. Lower taxes, the chief advantage which the inhabitants of these areas seek, will thus gradually disappear.

Outside Metropolitan Areas

A situation which is considered to be more desirable is the decentralization of population to the smaller cities and towns outside the metropolitan areas. If this occurs, it is generally accepted that it will be a result of the movement of industry to the smaller cities. There are some people who believe that industry is likely to seek decentralization of its own volition. They venture the prediction that "we shall see more factories established in smaller communities and in agricultural regions and fewer comparatively in the largest cities and in old manufacturing communities."³⁹ Ralph L. Woods in his consideration of this question takes the position that the economic justification for the centralization of industry no longer exists: "New conditions and great technical progress have invalidated the relationship, making the over-large city of today almost as useless as a gravedigger at a cremation. . . . A continuation of industrial and population concentration in large cities exacts of industry and the nation in general, a price which is unnecessary and detrimental to our economic health."⁴⁰

The transmission of high-tension electric current and new and improved methods of transportation have been pointed to as removing the old restrictions on factories which caused them to concentrate in or near large cities. No longer is it necessary for the manufacturer to locate in the large city, and the factors which caused him to move to the suburb are advantages which are present

³⁹ Franklin D. Roosevelt, "Back to the Land," 84 *Review of Reviews* 63 (Oct., 1931). For actual cases of such location of factories, see Jacob L. Crane, Jr., "Decentralization—Eventually but not Now," 133 *Annals of the American Academy of Political and Social Science* 234 (Sept., 1927); also see the study published by the Metropolitan Life Insurance Company, "The Migration of Industry in the New York Region for the Years 1926 and 1927" (1930); *Recent Social Trends*, vol. 1, chap. ix, p. 447; C. E. Merriam, S. D. Parratt, and A. Lepawsky, *The Government of the Metropolitan Region of Chicago*, p. 3.

⁴⁰ Ralph L. Woods, *op. cit.*, p. 105.

to an even greater degree outside the metropolitan area.⁴¹ For those industries which depend upon shipment by motor truck, the advantage of locating in a large city with its transportation facilities may disappear. Decentralization will in many cases lead to savings in the transportation costs of materials and of manufactured goods. Living conditions for workers will in most cases be more satisfactory in smaller cities outside the metropolitan area. The suggestion has been made, however, that a disadvantage for labor will be the difficulty of organization. Decentralization, it is said, is favored by industrialists because it fixes workers on a patch of ground from which escape is difficult. It will tend to make them satisfied with lower wages and less vigilant concerning working conditions.⁴² Further consideration will be given to this question in the section of this chapter entitled *The Future of Urbanization in the United States*.

Wartime Shifts of Population

The Second World War stimulated the movement of population, both from rural areas to cities and also as between cities. Existing communities were expanded and new ones created. Several cities had a population increase of over 100 per cent in the period 1940-44. Richmond, California, increased 296 per cent.⁴³ There was a greater demand for labor in industrial cities which converted to the making of war materials and stepped up their rate of production. The high wages offered in war industries attracted labor, both from rural areas and from other cities not engaged in making war materials and thus not enjoying the benefits of war contracts. There was also the movement to new centers of industrial activity set up for the production of war materials, such as shipbuilding yards and munitions factories. These resulted in the development of new urban areas and the incorporation of new cities. Finally, the great increase in the population of cities near army camps

⁴¹ Location in the metropolitan area, however, means a more flexible labor supply. Also there are available in the area many people as potential consumers of the goods produced.

⁴² R. G. Tugwell, *The Battle for Democracy*, quoted in Ralph L. Woods, *op. cit.*, p. 327.

⁴³ Chester Cooper, "How Fast Are Cities Growing?" 32 *Nat. Mun. Rev.* 243 (May, 1943); Editor, "Cities as War Casualties," 34 *ibid.* 3 (Jan., 1945); *Municipal Year Book*, 1945, pp. 28-29.

should be noted. Much of this was accounted for by the families of military personnel who desired to be near them.

Some of these shifts of population have proved to be only temporary. With the end of the war, many of the persons who went to war industry cities drifted back to their homes. There has been an exodus of the government emergency employees from Washington. Some of the people who went into war industry communities have remained, however, and will become permanent residents. They have found other employment in the community, usually in an industry that has converted from the production of wartime to peacetime materials. The next decennial census will throw further light on the permanent effects of war-stimulated movements of population.

This wartime movement of population created new problems for cities. Added municipal facilities had to be provided to meet the need for schools and to provide public health services, water, sewers, housing, law enforcement, and fire protection. The way in which cities met these problems will be discussed in the chapters which follow.

THE EFFECT OF INTERCITY MIGRATION UPON VILLAGES, BOROUGHES, AND TOWNS

There is a popular belief that though the urbanization movement has been proceeding in this country, it does not apply to villages and small towns. It is the opinion of many that there is an exodus from the small town to the larger city. It is said that improved highways and the automobile have sounded the death knell of the small town. A study of the census reports indicates that this impression is somewhat exaggerated.

The total number of people living in incorporated places of less than 2500 population has shown an increase at each census since 1890. The percentage of our total population living in such places is about the same as in 1890; it increased in 1900 and 1910, but showed a loss in 1920, 1930, and again in 1940. It should be noted, however, that until the 1940 census the rate of decrease in the percentage of the population living in such places was not so great as the decrease in the percentage of our total population

residing in unincorporated rural territory. During the decade 1930-40 there has been no change in the percentage of our population living in unincorporated rural territory, while there has been a slight decrease in the percentage of the people living in incorporated places of less than 2500 population.

DISTRIBUTION OF POPULATION IN RURAL TERRITORY, 1890-1940⁴⁴

| Year | <i>Incorporated Places Less than 2500</i> | | <i>Rural Territory not Incorporated Population</i> | <i>All Rural Territory Population</i> |
|------|---|------------------------------|--|---|
| | <i>Number of Places</i> | <i>Population</i> | | |
| 1940 | 13,288 | 9,343,910 (7.1) ^a | 47,901,663 (36.4) ^a | 57,245,573 (43.5) ^a |
| 1930 | 13,433 | 9,183,454 (7.5) | 44,636,770 (36.4) | 53,820,223 (43.8) |
| 1920 | 12,905 | 8,969,241 (8.5) | 42,436,776 (40.1) | 41,406,017 (48.6) |
| 1910 | 11,832 | 8,169,149 (8.9) | 41,636,997 (45.3) | 49,806,146 (54.2) |
| 1900 | 8,930 | 6,301,533 (8.3) | 39,312,609 (51.7) | 45,614,142 (60.0) |
| 1890 | 6,490 | 4,757,974 (7.6) | 35,891,381 (57.0) | 40,649,355 (64.6) |

^a Figures in parentheses represent the percentage of the total population.

THE FUTURE OF URBANIZATION IN THE UNITED STATES

The question arises as to how far the urbanization movement may go, and when and under what conditions we may expect a termination of this tendency. There are two aspects or phases of this question: (1) the urbanization movement in general, and (2) the growth of great metropolitan cities.

When the economic factors which are of primary importance in the growth of cities are no longer effective, we may expect an arrest of the tendency toward urbanization. That a saturation or equilibrium point for cities will be reached seems inevitable. Where that point will be is quite uncertain. The experience of England indicates that it is about 80 per cent for that country. The urban population having reached that point, it has remained fairly stationary, indicating that under present economic conditions the saturation point or proper balance between urban and rural popula-

⁴⁴ Compiled from census reports. Also see S. C. and Agnes Ratcliffe, "Village Population Changes," 37 *Am. Jour. of Sociology* 760 (Mar., 1932); *Recent Social Trends*, vol. 1, chap. x, pp. 509-513; C. L. Fry, *op. cit.*, p. 26.

tion has been reached.⁴⁵ Until the 1940 census, the more rapid increase in urban than in rural population indicated that the saturation point had not been reached in this country. On the basis of the uniform rate of increase in urban and rural population during the decade 1930-40 it would appear that the saturation point has now been reached. It should be pointed out, however, that conditions during this period were not normal, and that the depression accounted, in part at least, for the slowing up in urban growth.

A decided change in our economic system would be the most effective factor in changing the number of people living in urban areas. A great economic revolution that would drastically alter our economic conditions might change our urban picture greatly, as the Russian Revolution and its consequences changed Russia's population pattern. The economic depression which began in 1929 in the United States resulted in a noticeable back-to-the-farm movement, and is one of the factors which accounts for the slowing up of the urbanization movement in the decade 1930-40.

Increased attention has been given to the fact that we are divorcing people not only from the soil but also from the factory. It has been pointed out that because of technological improvements in industry fewer people are necessary to convert raw products into manufactured goods. A back-to-the-farm movement, the use of smaller tracts and more intensive cultivation, has been suggested as a partial solution of this problem of technological unemployment. Economic forces will unquestionably be the most important factors in determining the final balance between urban and rural areas.

A question also arises as to the future of our great cities. Writers in the past have speculated as to how large a city could grow.⁴⁶ Aristotle limited his ideal city-state to 10,000 on the basis of the difficulty of governing a vast agglomeration of people. In his essay, "On the Populousness of Ancient Nations," Hume put the maximum population at 700,000, and stated "from the experience of past and present ages that there is a kind of impossibility that any city can ever rise much beyond this proportion." Sir William Petty, writing in 1686, came to the conclusion that the upper limit for London's

⁴⁵ T. H. Reed, *Municipal Government in the United States* (1934), p. 8.

⁴⁶ A. F. Weber, *op. cit.*, pp. 451-453.

population was 5,000,000. He felt that it would be impossible to secure a food supply if the city grew beyond this size.

The significant question today is not how large cities can grow, but how large they should grow, and how large we may expect them to grow in the future. There are some who feel that the process has already gone too far. They hold that "the growth of large cities constitutes perhaps the greatest of all the problems of modern civilization."⁴⁷ They refer to large cities as "congestion *de luxe*," and as bringing "more and more of worse and worse."⁴⁸ President Franklin D. Roosevelt was an advocate of the development of many smaller cities, rather than the concentration of people in a few great cities. As he expressed it, we need "smaller cities and larger towns."

As in the case of land and industrial plants, cities are probably subject to the law of diminishing returns after they reach a certain point. The costs of city government increase per capita as the city increases in size. This is due in part to the increase in functions in the larger cities, and also to the fact that in a large city the difficulty of performing a given function, such as police protection, increases at a faster rate than the increase in population. Thus, for supplying water or transportation facilities, a point will be reached when such services can be supplied only at an uneconomic rate. This point will be reached when the increased cost exceeds the advantages to be derived from living in a large city.⁴⁹ What is the most efficient size for a city and when an increase beyond that point becomes uneconomic have never been determined. That there is an increase in the per capita cost is obvious. But what is the value to the individual who lives in such places? There are cultural and educational advantages or pseudo-advantages, the value of which cannot be measured. The value of these opportunities varies with the individual; what to one is an advantage, to another is a disadvantage.⁵⁰

⁴⁷ See James Bryce, "The Menace of Great Cities," *Proceedings of Second National Conference on Housing*, pp. 9-23, reprinted in part in Joseph Wright, *Selected Readings in Municipal Problems*, pp. 113-117.

⁴⁸ Lewis Mumford, *op. cit.*; John Stuart MacKenzie, *Introduction to Social Philosophy*, p. 101, quoted in A. F. Weber, *op. cit.*, p. 2.

⁴⁹ For an excellent discussion of this question, see M. R. Davie, *op. cit.*, pp. 11-26.

⁵⁰ *Ibid.*, pp. 11-26.

That the city, after it reaches a certain size, is subject to the law of diminishing advantages or returns in proportion to cost is illustrated by the housing problem in large cities. In large cities,

it costs more to house people, and they are not housed as well. The more the people, the higher the land values. The higher the land values, the larger proportion of the cost of housing has to go into land. . . . High land value leads to multi-family construction and over crowding. Families per dwelling and per acre increase as the population grows, and open space per person decreases. Up go risks of sickness, death, fire, crime, accident. Up go costs of sanitation, institutions, police, courts, hospitals, fire protection.⁵¹

The cost of meeting the problem of traffic congestion in a great metropolitan community also well illustrates the price we pay for large cities. One writer has pointed out that Wacker Drive in Chicago, which was built to relieve traffic congestion, cost \$26,000,000, though only one mile long. The amount of money spent on this project would build 700 miles of concrete country roads or 200 miles of fully improved city streets.⁵² The question seems to be whether the city is worth the price. Though governmental costs and the cost of living go up with the increase of population, the view taken by some is that these costs become more worth paying, on the ground that increases of opportunity keep pace with the population.⁵³

Two conditions or developments seem to offer the means for checking the growth and crowding in great cities. One of these, which has been referred to earlier, is the development of suburban residential cities. As Lewis Mumford says, "Human beings are still, after all, human; and though they would stand for even worse conditions if they thought their sacrifices and discomforts could not be helped, they are not likely to stay in the same posture once they find that an avenue of escape is open."⁵⁴ The other development,

⁵¹ George Soule, *op. cit.*

⁵² Jacob L. Crane, Jr., *op. cit.* Also see D. L. Turner, "Is There a Vicious Circle of Transit Development and City Congestion?" 15 *Nat. Mun. Rev.* 321 (June, 1926); C. A. Dykstra, "Congestion De Luxe—Do We Want It?" 15 *ibid.* 394 (July, 1926).

⁵³ C. L. Day, "The Freedom of the City," 22 *North American Rev.* 123 (Sept.-Nov., 1925).

⁵⁴ Lewis Mumford, *op. cit.*

which has also been discussed above, lies in the fact "that the growth of modern invention has diminished the necessity for urban concentration." Giant motive power, the transmission of electricity, and the development of motor and air transportation may tend to check the growth of large cities by making it possible and profitable for industry to decentralize.

Many of the factors which have in the past led to urban concentration, especially in a few great cities, are becoming less effective. A recent writer listed the primary causes of the association of people in cities as follows:⁵⁵ (1) centralized government power, (2) defense, (3) religion, (4) trade, (5) amusement, (6) industry, (7) transportation, (8) finance and banking, and (9) utilities. He went on to analyze each of the factors and pointed out that in most cases a decentralization or deconcentration of population was taking place because the reason for concentration no longer existed—and that in fact in many cases logic supported deconcentration. Centralization of government power accounts for the growth of Washington, D. C., and some of our state capitals. But the growth of independent political subdivisions, generally with lower taxes, has led to decentralization within our metropolitan communities. Although in ancient times, and even in early America, people gathered together in compact communities for purposes of defense, the experience of the Second World War indicates that the great city may be a military liability rather than an asset. Protection of persons and industries—especially those engaged in manufacturing war supplies—from air attack can best be secured by scattering industries. Religion and amusements formerly brought people into cities, but the temple and the cathedral of the ancient and medieval city have yielded to many churches and sects in America; and the movie, the radio, and paved highways mean that amusements are of no great significance in urban growth.

The commercial advantage of the great city and the importance of trade and commerce in city growth have been referred to earlier. They too are either adjusting themselves to urban decentralization or adopting practices which encourage and accelerate it. The mail-order house, chain store, and the branches opened by central de-

⁵⁵ Homer Hoyt, "Forces of Urban Centralization and Decentralization," 46 *Am. Jour. of Sociology* 843 (May, 1941).

partment stores in suburbs have all done their part. Factories have found it advantageous to locate in the suburbs, cheaper sites and lower taxes being the chief incentives. Motor truck transportation has been a factor in the decentralization of industry. Greater use of motor power for the generation of electricity and its transmission for great distances are factors to be considered in the future decentralization of industry. The significance of the Tennessee Valley Authority power program in the industrialization of that section of the country and the urbanization of those states remains for future determination but will without question have some effect. Economic factors account for urban growth and for the concentration of large population in a few cities. These factors are becoming less effective in urban concentration, and in some cases are actually the cause of urban decentralization.⁵⁶

That the cost of living in a city for an individual, or of being located there for an industry, is high is obvious. High taxes, food and housing costs, and high site values for construction are the cost we pay for living in a great city. The provision of an adequate water supply, disposal of wastes, maintenance of health, law enforcement, protection against loss from fire, transportation facilities, including subways and elevated highways—all lead to high costs for the privilege of living in great cities. The question is whether the cost is greater than the advantages are worth. Or rather, at what point in size does the cost become greater than the citizen can afford to pay? The answer would appear to be that this will vary between citizens and also between cities. No answer can be given to cover all situations.

In the opinion of some persons, the atomic bomb may be an important factor in the future growth of cities. Following the reports of the destructive effects of the bombs dropped on two Japanese cities in 1945, various suggestions were made for minimizing the results if at some future time this bomb was used against us. One suggestion was that we begin at once to take our cities underground so as to insure uninterrupted industrial production in case of attack.⁵⁷ Another proposal was that we break up our large industrial cities into smaller units. The 200 cities of over 50,000

⁵⁶ See L. Segoe, "Urban Population and Industrial Trends," 17 *Pub. Management* 163 (June, 1935).

⁵⁷ *The New York Times*, Aug. 21, 1945. The idea was advanced by Louis Bruchiss, aerial armaments expert.

population would be broken up into 1000 smaller cities.⁵⁸ Those who suggested this dispersal of population and industrial plants into small cities recognized the great cost of carrying out such a plan and the resulting loss in our industrial efficiency. They felt that the alternative was "the enslavement or destruction of our nation through the bombing of our great cities and industrial plants." As stated by Warren S. Thompson, "The instantaneous slaughter of one-fourth to one-third of all our people and the destruction of one-half to three-fourths of all our industry is the price we may very well pay if we continue to crowd people into the present type of city and build only large factories. . . . If we take no measures to minimize the havoc the new weapons can wreak upon our present urban communities, they and their industry are in constant danger of obliteration."⁵⁹

As yet no steps have been taken to put our cities underground or to disperse our population and industry into small units. Rather have we tried to meet the situation by international cooperation and the control of the use of atomic energy for destructive purposes. Hope, faith, and the gambling spirit are sufficiently strong that no marked deconcentration of our urban population is likely to take place because of the possible use of the atomic bomb against our cities. Breaking up our cities into towns and villages in anticipation of World War III would be a greater confession of lack of faith in international cooperation than we desire to make, or would be justified in making at the present time.

SOCIAL COMPOSITION OF THE CITY

In considering the problem of governing the American city, it is not sufficient to think of it as a great number of people living in a small area. It is necessary to know something of these people, their special characteristics, and wherein they differ from the population of the country in general.⁶⁰ In brief, we should know something of the material of which the city is made.

⁵⁸ *Ibid.*, Nov. 11, 1945. This view was advanced by William F. Ogburn, University of Chicago.

⁵⁹ Elmer T. Peterson (ed.), *op. cit.*, pp. 236-237.

⁶⁰ W. F. Ogburn, *Social Characteristics of Cities* (1937). This is a reprint of a series of articles that appeared in *Public Management* during 1936 and 1937. See also R. S. and H. M. Lynd, *Middletown*, for an interesting and suggestive study of an American community.

Governmental problems may arise from peculiar characteristics of urban populations. New services may be required; or the difficulty of meeting the problem may vary from city to city, depending in part upon the social structure of the particular city. Obviously, the difficulty of the governmental problems would vary in a wealthy residential suburb, a college town, and an industrial city with a large foreign-born laboring class. Political action and behavior are determined in part by the social structure of the city.

Some of the characteristics of the social composition of the city have little or no significance for the student of city government. The excess of females over males in the city, the differences in marriage and birth rates, and the percentage holding membership in lodges present social rather than political or governmental problems.

Urbanization accentuates the problem of health administration and makes necessary greater precautions and added expenditures. The excess of crime and the prevalence of vice mean that more money must be spent and that a more efficient governmental organization must be devised to meet the situation. Thomas H. Reed has suggested that cities do not breed criminals and people addicted to vice.⁶¹ Nevertheless, the rate of crime and the prevalence of vice are high; and though due to the fact that cities afford greater opportunities to those so inclined, a situation exists which must be met by concerted action. It thus becomes a problem of municipal government.

The large percentage of foreign-born and the low percentage of home ownership are probably the two most significant characteristics of city populations for the student of city government. As they are of interest chiefly because of their probable effect upon the political behavior of the municipal electorate, they will be discussed in the chapter on that subject.⁶²

⁶¹ For a discussion of the social consequences of city growth, see T. H. Reed, *op. cit.*, chap. ii; William Anderson, *American City Government*, chap. vii; M. R. Davie, *op. cit.*, pp. 39-50; Niles Carpenter, *The Sociology of City Life*, chap. ix.

⁶² See chap. xvii.

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Services Rendered by Municipal Governments

The growth of cities has made necessary an increase in governmental services and the assumption of new functions by governmental authority. Much of the increase in the services rendered by cities has been inevitable; any other policy would have led to intolerable conditions. To prevent lawlessness, conflagration, epidemics, greater effort must be exerted where people are living in compactly settled communities. Except for this increased effort, this common action, the city would be an unsatisfactory place in which to live.

This situation has been met by the creation of cities as agencies through which the people living in compact communities take common action. City government may be looked upon as a means to an end, as a means by which the people living in compactly settled communities secure satisfactory conditions under which to live, to work, and to play. The city government serves its purpose when it secures these conditions with a minimum sacrifice on the part of the citizens in taxes paid for the services rendered.

The provision for new governmental services, or for an improvement in the standard of those performed by other governmental units, is largely a matter of necessity. When the density of population reaches the point that it does in the American city, the need for performance of new services becomes imperative. The rather simple or perfunctory way in which the service is performed in rural or less densely populated areas becomes inadequate. Attention will first be given to these problems when urbanization requires new or at least increased governmental effort. This will be followed

by a consideration of new municipal functions involving determination as to whether they should or should not be performed by government.

OLDER MUNICIPAL SERVICES

Law enforcement illustrates the need for increased governmental effort to meet the problems resulting from urbanization. Cities cannot depend upon sheriffs and constables; a police force must be provided. The police force of New York City numbers over 15,000 men, that of Chicago over 6400, followed by Philadelphia with over 5000, Detroit with over 3600, and Los Angeles with over 2800. Newark, New Jersey, with a population of 430,000, has over 1200 policemen, and Hartford, Connecticut, with a population of 166,000, has 340 police employees. In the larger cities of the country about two of every 1000 inhabitants are police employees.

Not only has it been necessary as a result of urbanization to increase the number of persons engaged in law enforcement, but the facilities for this work have had to be improved to meet the changed conditions. Motor vehicles have been necessary to enable policemen to perform their duties adequately. All cities of over 100,000 population now have radio-equipped cars to increase the efficiency of their law enforcement machinery. There have been improvements in the methods of scientific crime detection, the use of the polygraph or lie detector, the use of fingerprints for the identification of individuals, and the use of chemistry to collect evidence. Numerous police schools bear witness to the fact that law enforcement has been and must be given serious consideration. It is a long road that we have traveled from the day of the sheriff and the constable. Much of the change and improvement has been necessary, a result in large part of the urbanization of the country and the resulting problem in the field of law enforcement.

In rural areas, little or no service is rendered by the government in fire protection, the problem being taken care of by the individual. Provision must be made in cities for cooperative action to prevent loss by fire. Were it handled as an individual matter as in rural areas, conflagrations would result. Again urbanization exacts its toll in higher taxes to meet another resulting problem. The fire depart-

ment of New York City numbers over 8000 men; that of Chicago over 2800; and that of Philadelphia over 2400. Fresno, California, with a population of 61,000, had 150 firemen in 1945. Not only are there employees to be paid but costly equipment must be purchased and maintained.

Greater effort and expenditures must be made for health administration in cities than in rural areas. Providing an adequate water supply and disposing of sewage and wastes are individual problems in the rural areas, but in cities they must be treated as community problems to be entrusted to the government. Parks are maintained and provision is made for recreation. The government must see that the milk and food sold in the city are pure. This may mean supervision of both the source of supply and the method of distribution. Several cities now require health examinations for food handlers. Special efforts must be made to control communicable diseases. Among the newer activities in the field of health might be mentioned smoke abatement and the attempt to reduce noise.

In rural areas, housing is primarily an individual problem; you build as you please and you alone will suffer if mistakes are made. In cities, defective or substandard buildings become a matter of group concern. Housing and building codes and the use of building permits, with standards directed at health and safety, have been found essential in cities. There has been some use of rent regulation in emergency periods. A high proportion of city residents live and work in rented buildings, and in some cases it has been found necessary to protect them against exorbitant rent charges. During both the First and Second World Wars this power was used. The menace of the slum, which is par excellence an evil of crowded city living, has led the government to assume a positive responsibility for providing adequate housing accommodations in congested urban centers.

The administration of public relief is not a distinctly urban problem, being present also in rural areas. It is in the cities, however, that the problem is most acute. The relief expenditures which are made in cities are greater than their proportionate population justifies. The disadvantage of the cities in this regard, especially those which are industrial, during periods of depression is obvious. Unemploy-

ment hits the cities harder than it does the rural areas. Not only does industry suffer more in a depression than agriculture, but city people are peculiarly dependent on a steady flow of wages. The farmer can provide at least some of his food supply; but when the factory closes, the apartment dweller can't grow potatoes or raise chickens in a yard which he doesn't have. It should be pointed out that meeting the relief problem has not been treated as a city responsibility. The county and state formerly, and in the depression following 1929 the national government, joined with the cities in taking care of persons living in cities who were in need of relief. Regardless of which unit of government provides for people in need, the problem is presented in its most accentuated form in cities.

As compared with the construction and maintenance of city streets, rural highway administration is a simple problem. In larger cities, when elevated highways and subways become essential, the financial burden becomes especially heavy. Street cleaning, snow removal, and street lighting must receive consideration—and appropriations. With the coming of the automobile, new problems of traffic regulation have developed, requiring the construction of traffic signals and the regulation of parking. Several cities have found it necessary to maintain public parking lots.

Not only are the problems referred to in the preceding paragraphs more complex, and the furnishing of the service more costly in the cities than in rural areas, but the complexity of the problems and the resulting costs increase in the larger cities. The increase is greater than the increase in numbers justifies, the *per capita* cost of performing most services being greater in the larger cities. Thus the per capita cost of providing fire protection is greater for cities in the population group of over 500,000 than for any other group.¹ The same is true of police expenditures. In 1945, the per capita police department expenditure for cities over 500,000 population was \$7.25; for those in the 10,000 to 25,000 population group it was \$2.87.² This may be accounted for in part by the higher salaries and more expensive equipment in the larger cities, but in part it is the result of the fact that more policemen are needed per 1000 population. Thus the cities of over 500,000 had one policeman

¹ *The Municipal Year Book*, 1946, p. 364.

² *Ibid.*, p. 409.

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for every 461 persons living in the city, whereas cities in the 10,000 to 25,000 group had one for every 869 persons.³

NEWER MUNICIPAL FUNCTIONS

The American city has become a great cooperative consumers' society engaged in buying and selling services to its citizens.⁴ The members of the community, acting through their governmental organization and their officials and employees, purchase these services, paying for them either in taxes or, in the case of corporate functions such as municipally owned utilities, in proportion to the benefit received or service used. Our cities have undertaken a long list of new functions in an effort to provide more satisfactory conditions under which their people may live.

Detroit, Milwaukee, and Cincinnati illustrate this tendency to increase municipal functions. In 1824 Detroit had a population of 1440 and performed a total of 23 activities; in 1850 the population had increased to 21,091, and the functions to 42; in 1900 the population had increased to 285,704, and the activities to 132; and in 1940 the population had reached 1,623,452, and the activities 394.⁵ A study made by the Citizen's Bureau of Milwaukee in 1931 pointed out that approximately 300 municipal activities were being performed in that city. One-fifth of these activities had been undertaken since 1916.⁶ Cincinnati increased the number of municipal services from 21 in 1802 to 358 in 1936, with 181 new activities being added in the period following 1900.⁷

³ *Ibid.*, p. 409.

⁴ R. T. Ely, "Government in Business," 84 *Review of Reviews* 44 (Oct., 1931); also see *ibid.*, p. 67 (Aug., 1931). On the basis of this, some persons have referred to the American city as being a great business corporation and have argued that business principles and methods should be used. For an interesting discussion of the analogy, see C. A. Dykstra, "Public Administration and Private Business," 14 *Pub. Management* 117 (Apr., 1932). Also see L. Hill, "Business Standards Inadequate for Public Service," 14 *ibid.*, 211 (July, 1932).

⁵ L. D. Upson, "The Growth of a City," in *Public Business*, No. 70 (June 1, 1922); L. D. Upson, "Research and the Increased Functions of City Government," 27 *Am. City* 407 (Nov., 1922); L. D. Upson, "Increasing Activities and Increasing Costs," 11 *Nat. Mun. Rev.* 317 (Oct., 1922); L. D. Upson, *The Growth of a City Government* (1942).

⁶ Citizen's Bureau of Milwaukee, *Growth of Governmental Activities in Milwaukee* (Oct. 17, 1931).

⁷ *The March of City Government*, Municipal Reference Bureau, Cincinnati, 1937.

One of these newer functions is city planning.⁸ This is the readjustment and guidance of the physical development of the city with a view to both remedying past mistakes and also guiding its future development so as to prevent the same errors from being made. The widening and straightening of streets is a type of remedial planning. Control over the laying out of new subdivisions looks to the future and attempts to avoid the mistakes which have been made in the past. City planning is an effective means of making the city a more desirable place in which to live, to work, and to play, with a minimum expenditure of money. Zoning, which is one of the most important phases of city planning, is the division of the city into zones or districts, with different regulations and limitations in each as to the use of private property.⁹ Zoning ordinances limit the height of buildings, the percentage of lot area which may be occupied, and the uses to which the building may be put. The courts have sustained city planning and zoning as a reasonable exercise of the police power for the health, safety, and general welfare of the people living in the city.

The increase in the functions performed by the American city has gone beyond what might be termed necessary governmental services. As a matter of policy, people have been entrusting to their city governments functions which are not absolutely necessary, and, in some cases, services which are not strictly governmental in the commonly accepted use of the term. Urban populations have been demanding that their governments perform services which will make their cities more desirable and attractive places in which to live. The result has been a great increase in municipal functions or services. Libraries, art galleries, museums, zoological and botanical gardens, auditoriums, tourist camps, swimming pools, parks, golf courses, aviation landing fields and radio broadcasting stations are some of these newer activities in which cities are engaged.¹⁰

As pointed out by Dr. Upson in his study of municipal activities in Detroit, activities not known or considered a decade or two ago

⁸ Charles M. Kneier, *Illustrative Materials in Municipal Government and Administration*, chap. xv.

⁹ *Ibid.*, chap. xvi.

¹⁰ Changed conditions call for new services. In 1945 the New York Board of Trade recommended to Mayor O'Dwyer the establishment of a separate department of aviation. *The New York Times*, Dec. 27, 1945.

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are being taken over by government. Parkways, pleasure drives and boulevards, ornamental street lighting, traffic regulations, and municipal universities are commonly accepted governmental activities today but formerly were not considered necessary. A changing concept of social justice has led to new activities to ameliorate conditions resulting from social and economic causes. Modern scientific progress has also been a factor in the increase of municipal activities, as in disease prevention and health administration.¹¹

The extension of municipal activities often results from the demands of public opinion. The desire and demand for such services usually originate with a small minority group who create a favorable public opinion. They "sell their proposition" to the people, and once this is accomplished, it usually is easy to secure the adoption of the service by the municipal government. Louis Brownlow has thus referred to "voluntary associations acting as incubators of new forms of municipal activities."¹² The people of the city require that their municipal governments provide what they in their private capacity cannot furnish. Better schools, streets, parks, police and fire protection, municipal bands, etc., have been the result.¹³ It was pointed out in a study made several years ago that "in 857 cities with a population of five thousand or more, there are 282 bathing beaches, 688 baseball diamonds, 487 municipal tennis courts, 233 public golf courses, 93 stadiums, and 61 open-air theatres."¹⁴ In 1945 there were 402 cities which owned auditoriums.¹⁵ This indicates the extent to which municipal activities are being extended to other than essential and necessary governmental services.

This increase in activities is also shown by the extension of municipal ownership. Services which were formerly entrusted to private

¹¹ L. D. Upson, *The Growth of a City*, published by the Detroit Bureau of Governmental Research (rev. ed., 1942); L. D. Upson, "The Growth of Municipal Functions," 11 *Pub. Management* 639 (Nov., 1929); L. D. Upson, "The Growth of a City," 13 *ibid.* 193 (June, 1931).

¹² Louis Brownlow, "The Co-ordination of Municipal Administration Under the City Manager," 12 *Pub. Management* 106 (Mar. 1930); Louis Brownlow, "The Scope of Municipal Government," 11 *ibid.* 687 (Dec., 1929).

¹³ Herbert H. Lehman, "The State and Its Municipalities," *Twenty-Second Annual Meeting of the Conference of Mayors and Other Municipal Officials of New York State*, 1931, p. 88.

¹⁴ R. M. Dorton, "Municipal Enterprises," 10 *Pub. Management* 537 (Aug., 1928).

¹⁵ *The Municipal Year Book*, 1946, p. 49.

enterprise are now being placed under municipal control. Water plants are now predominantly under municipal ownership, all of the cities of over 500,000 owning their own plants; only one of the 23 cities in the 250,000 to 500,000 population group is served by a privately owned water plant.¹⁶ Many cities now own their electric generating and distributing systems. The degree to which municipalities may extend their activities into the corporate field is illustrated by the municipally owned and operated gasoline filling station in Lincoln, Nebraska.¹⁷ Liquor stores are now owned and operated by cities in some states.¹⁸ Excelsior Springs, Missouri, in 1936 acquired from private owners a mineral water system at a cost of \$750,000.¹⁹ Municipally owned airports are found in over 800 American cities.²⁰

Activities of cities in the field of industrial promotion may be cited as another illustration of the tendency of local governments to undertake new functions. Civic associations, especially Chambers of Commerce, have had as one of their activities the bringing of new industries to their city. This has been accomplished through advertising and pointing out the advantages of locating industrial establishments in the city. In some cases, financial incentives have also been offered. Some cities are now beginning to perform this function—at the expense of the taxpayers. The advantage to be derived by the city from bringing in new industries is believed to justify the expenditure of public funds for this purpose. In some cases, the inducement is in the form of tax exemption for a certain number of years. Mississippi was one of the first states in which municipalities sought to promote industries.²¹ The constitution of 1890 authorized the legislature to permit municipalities to exempt the property of private enterprises from taxation, and in 1892 enabling legislation was enacted under which new industrial estab-

¹⁶ *Ibid.*, p. 52.

¹⁷ 13 *Pub. Management* 208 (June, 1931). Also see E. L. Bennett, "Cincinnati's Municipal Steam Railroad," 10 *ibid.* 744 (Dec., 1928).

¹⁸ Ambrose Fuller, "Thirty-Two Minnesota Cities Establish Liquor Stores," 16 *Pub. Management* 376 (Nov., 1934); 18 *ibid.* 215 (July, 1936); 30 *The Municipality* 39 (Feb., 1935).

¹⁹ 18 *Pub. Management* 89 (March, 1936).

²⁰ 53 *Am. City* 13 (Oct., 1938).

²¹ M. H. Satterfield, "Mississippi Municipalities and Industrial Promotion," 24 *Bulletin of the National Tax Association* 68 (Dec., 1938).

lishments were exempt from municipal taxes for the first five years of their existence. This did not prove to be sufficient to attract industries; hence in 1932 the legislature authorized municipalities to offer additional inducements.²² An act of 1936 authorized cities to issue bonds for the construction of buildings to be used for industrial enterprises. The cities could either own and operate the plants or sell or lease them for operation by private concerns.²³ Few cities made use of the statute and it has since been repealed. A recent study of 41 communities in Tennessee with populations ranging from 900 to 25,000 revealed that 29 had factories which were being currently subsidized, and three others had factories which had been subsidized in the past.²⁴ Buffalo and San Antonio in 1939 amended their charters to provide a program of publicity. The Buffalo amendment established a division of publicity directed by the mayor and a seven-member board and charged with the duty of advertising the city. The San Antonio amendment provided for a property tax to finance a nation-wide advertising campaign, with none of the money to be spent in Texas. This is a long jump from the older and more orthodox governmental functions of providing streets and other public works, police and fire protection, and health administration.

There is a serious question as to whether it is wise for cities to use public money to attract industry through subsidies or tax exemption.²⁵ A more sensible approach, and in the opinion of some a more effective one, would be to provide an efficient and well-governed city. Industries appear to be interested in other factors than a low tax rate. They look at the long-time aspects of the question and realize that special tax concessions will not compensate for inadequate police and fire protection for their property, and poor schools, health and recreational facilities for the families of their employees. The author of a recent study of this question con-

²² The 1932 act was declared unconstitutional as calling for the expenditure of public moneys for other than a public purpose. *Carothers v. Town of Booneville*, 169 Miss. 511, 153 So. 670 (1934).

²³ The act was upheld as a proper expenditure of public moneys. *Albritton v. City of Winona*, 181 Miss. 75, 178 So. 799 (1938).

²⁴ Robert E. Lowry, "Municipal Subsidies to Industries in Tennessee," 7 *Southern Economic Jour.* 317 (Jan., 1941).

²⁵ W. S. Miller, "Attracting Industry Through Tax Exemption," 10 *Municipal Finance* 23 (1938).

cludes that "municipalities will find in the concept of public services well planned and well administered their most effective inducement to industry."²⁶ The old test of whether the community is a "good place in which to live" is coming to be recognized, both by industries and by individuals, as a basic and fundamental consideration in determining where they will locate. As stated by Louis Wirth, "Unless a city has a sound economic base and offers genuine advantages in the form of accessibility to raw materials, labor, and particularly markets, and unless it has advantages in transportation and in efficiency of government and wholesomeness of life, it will not be able to induce industries to settle and to remain in the community."²⁷

MUNICIPAL FUNCTIONS AND PUBLIC POLICY

There are some who look upon this extension of municipal activities as an undesirable thing. One group opposes such extension, especially in the corporate field, on the ground that there should be "less government in business." Some of those who oppose it have gone so far as to say that "the best public servant is the worst one." They realize that the efficient public servant is tending to disprove the old statement that "government service is sure to be inefficient," the argument usually advanced in opposition to the extension of municipal activity into the corporate field. As the level of efficiency increases in the municipal service, the argument for the extension of municipal activities becomes stronger. An honest government and an efficient administration may thus tend to bring about an increase of municipal functions.²⁸

Another group base their opposition to the extension of municipal activities on the ground that there has been an unnecessarily liberal scale of public living. Their opposition is not to the delivery of such services *by the government*. They believe that there are some services

²⁶ Robert E. Lowry, "City Subsidies to Industry Wane," 34 *Nat. Mun. Rev.* 112 (Mar., 1945).

²⁷ Louis Wirth, "Effect of Recent Social Trends on Urban Planning," 27 *Pub. Management* 10 (Jan., 1945).

²⁸ M. E. Dimock, "Do Business Men Want Good Government?" 20 *Nat. Mun. Rev.* 31 (Jan., 1931); Homer Ferguson, "A Plea for Inefficiency in Government," 16 *Nation's Business* 20 (Nov., 1928); 13 *Pub. Management* 374 (Nov., 1931).

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which may be desirable, but that we cannot afford these things when furnished through the channels either of government or of private enterprise. This view has been summarized by the Commission to Investigate County and Municipal Taxation and Expenditures in New Jersey, as follows:

Communities composed of prudent persons will at times get into a scale of public living or expenditure quite beyond that which any of these persons would consider proper if applied to his private affairs. Yet the community scale is no more to be justified on an extravagant plane than is that of the individual. On account of undue optimism as to the rate of growth, the ambitions of local officials, the indifference of taxpayers as to the significance of certain programs, the preponderance of voters who may be paying little or no direct tax, the activities of interested parties such as architects, engineers, or contractors, the occasional corruption of officials, or for other reasons, the community gets committed to expenditures for paving, sewage systems, water systems, schools, parks, protection, or other things which are done on a scale entirely beyond the capacity or the need.²⁹

This view is sound and in many cases the criticism is justified. The desirability of "living within your means" applies to governments as well as to individuals. And the undesirability of trying to keep up with your neighbors when financially you cannot afford to do so likewise applies to both governments and individuals.

Advocates of the extension of municipal activities point to the increased efficiency of city government. While admitting that it was unwise to entrust many activities to cities as long as they were inefficient and corrupt, they hold that municipal governments have become more efficient, and they believe that we are justified in entrusting more activities to their care. They take the view that we have sewers under municipal operation and control for the reason that "we can thus get better service for the money than we could by letting private companies operate sewers under franchises and charge us for connection." According to this view, an efficient city government "could save its citizens millions by taking other services out of the area of private profit or private philanthropy and running

²⁹ Report No. 1 of Commission to Investigate County and Municipal Taxation and Expenditures, pp. 6-7.

these services at cost for the general benefit."³⁰ They believe that few of the activities of municipalities can be looked upon as frills or unnecessary services. They view it as a question of performance, either public or private, or a denial of a needed service. A study of the functions being performed supports this view.

There are some newer services which government has to perform because private initiative has been unwilling or unable to do the task. The providing of adequate and satisfactory housing facilities for people in the lower income groups would be accepted by most persons as a governmental function by default. Private housing interests have failed to meet the problem; local, state, and federal governments have now joined hands in performing this needed service. It should also be noted that community living makes it socially important for the government to engage in some of the activities that many people consider frills. Playgrounds as a means of reducing juvenile delinquency are illustrative. In referring to functions as frills, some persons think in terms of a less-urbanized country when these social services were less important.

With the increase in the number and improvement in the quality of the services rendered, there has been an increase in the number of employees in the American city. An inevitable consequence of urbanization has been an increase in the cost of government. Periodically there come waves of indignation against this mounting cost of government. In periods of economic depression especially, much is said about reducing it. Demands for the retrenchment of governmental expenditures are made. Too much emphasis is given in such cases to what the government costs, and not enough consideration to what the government is doing.³¹ While the expenditures for city government are high, the taxpayer must remember that, for the sum expended,

³⁰ R. S. Childs, "A City Manager Truck or a Political Wagon?" 12 *Pub. Management* 37 (Feb., 1930).

³¹ William Anderson, "The Other Side of the Tax Problem," 14 *Pub. Management* 89 (Mar., 1932), reprinted from 17 *Minnesota Municipalities* 7 (Jan., 1932); C. E. Merriam, "Boycott of Government Costly," 14 *Pub. Management* 115 (Apr., 1932); William Anderson, "Who Killed American Taxpayer?" 13 *ibid.* 223 (July, 1931); H. S. Buttenheim, "Taxes for Maximum Public Benefit with Minimum Private Burden," *Greater Pittsburgh* (Mar., 1933). Cf., however, G. C. Cummin, "Is Budget Slashing Imperative?" 22 *Nat. Mun. Rev.* 160 (Apr., 1933); H. S. Buttenheim, "Where Government Can Get the Money," 22 *ibid.* 161 (Apr., 1933).

a policeman would respond to his call for help at any hour of the day or night; a modern fire engine would speed through the streets to his rescue at the slightest hint of danger; laboratory technicians were on constant duty testing the water he uses to drink to be sure that it was wholesome; doctors and nurses safeguarded the health of the community and thereby prevented his exposure to many infectious diseases; his children were provided with schools, teachers and playgrounds; parks, libraries and museums were maintained for his recreation and assistance; streets were paved and kept clean and lighted for his convenience; his life was protected and travel was facilitated by traffic regulation; his garbage and ashes were collected from his back yard and in some cases from his cellar; and that destitute family down the street whose desperate plight preyed on his mind received relief.³²

As C. A. Dykstra, former city manager of Cincinnati, said a few years ago, "What is called the high cost of local government is in reality the high cost of living according to the standards of the twentieth century."³³ Insofar as governments are performing necessary acts, and doing them as satisfactorily and efficiently as they could be done by private enterprise, the cost of government is not an additional expense but rather a substituted expense.³⁴ The citizen is making two kinds of expenditures. A certain proportion of the services he receives is paid for out of his tax pocket; out of his other pocket he pays for other services received. If he takes more out of his tax pocket, he should take less out of the other one.³⁵ In some cases, however, the question is as to whether he can afford to take it out of either pocket.

Important changes will unquestionably be made in the future in the field of municipal activities. There will be realignment and readjustment based upon experience. Activities now performed by cities may be dropped and taken up by private enterprise. Unquestionably others which are now entrusted to private enterprise will become governmental functions.³⁶ The tendency in the past has

³² H. S. Buttenheim, "Are Local Expenditures Excessive?" 48 *Am. City* 59 (Feb., 1933).

³³ For an excellent discussion of the question of governmental retrenchment in periods of depression, see C. A. Dykstra, "The Real Cost of Municipal Retrenchment," 14 *Pub. Management* 341 (Nov., 1932).

³⁴ Simeon E. Leland, "Should Public Expenditures Be Reduced?" 13 *Pub. Management* 393 (Dec., 1931).

³⁵ C. A. Dykstra, "The Real Cost of Municipal Retrenchment."

³⁶ William Anderson, "What Activities for the City?" 14 *Pub. Management* 309 (Oct., 1932); L. D. White, "Whither Cities," 13 *ibid.* 5 (Jan., 1931).

been clearly toward an extension of municipal activities. As a result of this increase in functions and cost, the study of municipal government has become more significant.

Rather than give so much attention to the things being done by governments, more consideration should be given to the way in which they are being done. Consolidation of governments so as to reduce the number—there are about 155,000 governments in the United States—would be a means of cutting the cost. Improved administrative practices—improved methods of budget making, centralized purchasing, the merit system, and personnel administration—are other ways of reducing governmental costs. Efforts to secure economies which will promote efficiency should be the first goal in reducing the cost of government. Then and only then should functions be curtailed to reduce the burden of taxation.

WAR AND MUNICIPAL SERVICES

While the power to declare and carry on war is vested in the national government, the existence of a state of war has a definite impact on municipal government. This may be seen both in the new services which must be rendered, and in the change in emphasis in old functions. With the development of modern mechanized warfare, the responsibility of municipal governments in carrying out a war program becomes greater. It is in or near cities that factories are located in which airplanes, tanks, ships, guns, and the other matériel for war is made, and it is the cities which must furnish the services that are needed to make it possible for the plants to operate satisfactorily and for the workers to live in comfort.³⁷ In order to prepare for defense in case of emergency and to cooperate with the national government in the war effort, many cities established defense councils in both the First and Second World Wars. Some went so far as to establish such councils with paid staffs.

While, in general, war means an increase in municipal services,

³⁷ Arnold Miles and Roy H. Owsley, *Cities and the National Defense Program*, American Municipal Association (1941); James L. Sundquist, *British Cities at War*, American Municipal Association (1941); Charles P. Taft, "Home Towns Organize for Defense," 31 *Nat. Mun. Rev.* 18 (Jan., 1942); Charles P. Taft, "National Defense and Community Service," 30 *ibid.* 321 (June 1941); "Effect of National Defense on Cities," 23 *Pub. Management* 291 (Oct., 1941).

in some cases it involves a change in emphasis, with greater stress being placed on certain activities. One field in which there is a reduction in activity is the construction of public works. Appeals are made to local governments to construct only absolutely essential public works in order that manpower, materials, and money may be left for war uses. A conservation order issued by the War Production Board in April, 1942, halted all types of construction not essential to the war effort. In defense communities—those with army camps or greatly expanded war industries—this was not possible; instead, there was a demand for new public works to meet the needs. The Community Facilities Bill, with an appropriation of \$150,000,000, was passed by Congress in 1941 to aid local governments in defense areas in meeting the demands resulting from a rapid growth in population. A large percentage of this money was allocated to cities for water and sewage systems.³⁸

The impact of war on cities may be illustrated by the following statement made by the city manager of Morgantown, West Virginia, in 1941:

Construction of an ordnance works here has necessitated additional sewer and paving improvements (despite paving of 20 miles of streets and construction of 30 miles of sewers by the WPA during the depression); operation of the incinerator 12 instead of 8 hours daily, with additional personnel; installation of additional street lighting units in outlying sections due to residential construction; and additional personnel at city hall to handle calls, complaints, and requests for information from the added population and the large number of strangers in town. When construction of the ordnance works was announced, a traffic survey was undertaken and a planning commission created to anticipate and solve traffic problems. The state road commission has been requested to construct a boulevard through the city and a highway to by-pass the city. Additional policemen have been recruited to handle traffic and vice problems, and traffic signals and other controls have been installed. Traffic has so congested the streets around the central fire station that it has been necessary to construct substations and to increase fire personnel and equipment.³⁹

With our entry into the war a few weeks after this statement was made, the same situation developed in many cities; the difference in degree varied, of course, from city to city.

³⁸ 24 *Pub. Management* 33 (Feb., 1942).

³⁹ Statement by Elmer W. Prince in 23 *Pub. Management* 294 (Oct., 1941).

New law enforcement responsibilities fall on cities in periods of war. The threat of espionage and sabotage must be met, and in this the municipal police have an important part. Added precautions must be taken to protect defense industries and municipal property (waterworks, light plants, sewage disposal plants, etc.). Chicago may be cited as an example of the added duties of police in time of war in anti-sabotage work. This was true in the period prior to our entry into the war, and it became more pronounced after that date. According to a study made by the American Municipal Association in 1941: "Six hundred and seventy-four 'vulnerable' points throughout the city were listed in September, 1940, by the Chicago Police Department for protection against sabotage. The list included 97 bridges and canals, 70 ports and wharves, 42 light and power plants, 72 banks, 12 armories, 18 cribs and waterworks, 27 radio stations, and 34 telephone exchanges."⁴⁰ Similar activities were undertaken in other cities in the national defense period and more particularly after the outbreak of war. Local police also cooperated with the Federal Bureau of Investigation in apprehending persons guilty of subversive activities. The police department is one of the first agencies of local government to feel the impact of war, its duties and responsibilities being increased in such periods.

With modern methods of warfare—aerial attacks and the use of incendiary bombs—the danger of conflagration becomes greater. Fire departments must be prepared to cope with problems of a magnitude not presented in time of peace. Special equipment must be provided and special training given so that the city will be prepared if an attack is made. The work of the fire departments in strengthening their forces, in both equipment and manpower, was carried on in cooperation with the Office of Civilian Defense.⁴¹

In the field of both fire and police administration, cities in war-time have organized for civilian protection to supplement the work of the regularly established forces in cases of emergency. Auxiliary fire fighters, auxiliary police, and air raid wardens have been organized and trained.

Housing facilities proved inadequate in cities which had rapid increases in population as a result of the defense program. A federal

⁴⁰ Arnold Miles and Roy H. Owsley, *op. cit.*, p. 34.

⁴¹ 24 *Pub. Management* 34 (Feb., 1942).

Division of Defense Housing Coordination was created to stimulate local activity and cooperate in providing housing facilities. With the housing shortage there came the problem of high rents. The federal, state, and local governments cooperated in preventing unfair rent charges.

Special health and welfare problems arise in war periods. This was recognized by the creation, in 1941, of the Office of Defense Health and Welfare Services under the Federal Security Administrator. A Division of Social Protection was set up to cooperate with local authorities in controlling prostitution near army camps. A sudden increase of population in defense boom towns means health and welfare problems which must be met in large part by local action.

Planning for both the war and the postwar periods becomes essential.⁴² As was pointed out above, the location of new defense plants and the change and expansion of existing plants to meet defense needs raise immediate problems of housing, health, education, traffic regulation, water supply, and sewage disposal. Some agency to plan, to think, and to propose an integrated program to meet these new problems is needed. Especially is it imperative for cities to plan and prepare to meet these problems in the postwar period. As stated by the city manager of Newport News, Virginia, in 1941, "The real problem created by the national defense program in this city is in planning for a return to normalcy after the emergency."⁴³

POSTWAR ACTIVITIES

With the end of the war in 1945, cities began to face the problems of reconversion to a peacetime basis.⁴⁴ War-activity communities found these problems particularly acute. Cities which prior to the war had been industrial areas and had merely converted to war work and expanded their production, found the postwar problem less difficult. Industry was converted to peacetime production and

⁴² Luther Gulick, "Cities and Postdefense Planning," 24 *Pub. Management* 3 (Jan., 1942).

⁴³ 23 *Pub. Management* 295 (Oct., 1941).

⁴⁴ Editorial entitled "Cities as War Casualties," 34 *Nat. Mun. Rev.* 3 (Jan., 1945).

much of the labor which had come in during the war was absorbed. New industrial communities which had been developed for the particular job of war production were especially hard hit. Their location had been chosen because of economic advantages in their particular war production activity or for strategic considerations. But for postwar production, their location often was unsatisfactory or the problem of conversion too great. Many of these communities were destined to be deserted—ghost towns.

Richmond, California, is illustrative of the problems arising from the war-stimulated and temporary movement of population to cities. In 1940, the city had 23,000 population; with the war and four new shipyards producing for wartime purposes, the population grew to 100,000. In a study of the postwar adjustment problem, the city manager estimated that the population would drop to about 50,000. Developments such as this have led writers to refer to these war-activity cities as "war casualties" deserving of the Purple Heart, and as having postwar problems which will be difficult if not impossible of solution unless they secure help from both the state and the federal government.

Several cities recognized the need for a central clearinghouse of information and for counsel for returning veterans.⁴⁵ In some cases such services were financed by community chests, but in others entirely or in part by the local government. They gave advice and assistance to the veteran in finding a job, advised him as to his legal rights and benefits under state and federal laws, and assisted with personal and family problems. This service was especially needed in the immediate postwar period. Municipal activity in this field should be gradually reduced and should end in a few years.

Personnel problems faced cities in the postwar period. There was the problem of absorbing employees returning from military service and also providing for veterans seeking public employment. The policy as to giving veterans preference in selecting and promoting employees had to be decided.⁴⁶

The war caused a cessation of public works construction programs. Action had to be started again in this field to restore the physical

⁴⁵ Orin F. Nolting, "Veterans Information Service Centers," 27 *Pub. Management* 166 (June, 1945).

⁴⁶ J. J. Donovan, "Planning Postwar Personnel Policies," 27 *Pub. Management* 4 (Jan., 1945). See also chap. xxvi for further consideration of this question.

facilities needed to deliver municipal services. In cooperation with the state and federal governments, the cities attacked the housing problem. The war had in fact dislocated municipal activities and programs in all fields and in the postwar period efforts were made to get back to normalcy. The wise city administrator had planned for this period and had a program ready to be put into effect when the war ended.⁴⁷

CONCLUSION

The city is an organization or institution devoted to service. It is created and maintained for the purpose of performing functions and delivering services which are essential to make living in the modern city more tolerable and more agreeable. If it does these things at a reasonable cost to the taxpayers, it has served its purpose and fulfilled its mission. The goal is to deliver the essential or desired services at the minimum cost. The chapters which follow will be devoted to a consideration of the means and methods by which this is accomplished in the American city.

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⁴⁷ Beginning in January, 1944, and ending April, 1945, *Public Management* presented a series of sixteen articles dealing with postwar planning for municipal facilities and services. The postwar problems to be met in the various fields are set forth in these articles. Also see Walter H. Blucher, "Why Cities Should Make Postwar Plans," 24 *Pub. Management* 360 (Dec., 1942).

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Creation and Legal Nature of Municipal Corporations

The development of new governmental problems as a result of the coming together of people in urban areas may be illustrated by the establishing of a small community at an important highway intersection. Beginning with a garage, a filling station, and a tourist camp, other businesses, such as a store and a restaurant, are soon established. Within a few years a small town develops. As yet it is unincorporated, and no government, other than that of the county and township, is provided.

As the population of the small urban community increases, new problems develop, or old problems become more serious than in a strictly rural area. There is need for some common united effort or action to meet these new problems; this can best be done by establishing some organization or governmental machinery. The result is the setting up of a new unit of government, its boundaries confined to this hamlet. In legal terminology, a town, village, borough, or city has been incorporated—a municipal corporation has been created. A municipality in English and American law is any subordinate public authority which is created by the central government (the state government in the United States) and is vested with the legal rights of a corporation. The term applies to cities, villages, towns, counties, and special districts. By common usage, however, the term municipality generally refers to urban communities or cities and is so used in the discussion which follows.¹

¹ J. A. Fairlie, *Municipal Administration*, preface, p. vii. For the distinction between municipal corporations and quasi-municipal corporations, see J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed., vol. 1, sec. 57.

In the case of some of the problems presented, the people of the area incorporated are primarily benefited. In the case of other problems, however, such as the enforcement of law, the state also is interested, since the forming of the urban area means greater difficulty of law enforcement than when the section was strictly a rural community. It is thus sometimes said that there is a dual purpose in the creation of municipal corporations. The one is to provide services for the people within its boundaries through officers chosen by the voters. These officers act as the trustees of the people in the city, carrying out the trust which has been committed to their charge. The other purpose in the creation of municipal corporations is that of acting as an instrumentality of the state to carry out powers and duties not strictly local in nature. The city in this case is an agency of the state, being used by it as a matter of convenience to carry out its policies and laws.

In the case of the municipal corporation, however, the primary purpose of its creation is to serve local needs. As Dillon says, it is created "partly as an agency of the state to assist in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town, or district which is incorporated."² It is in this aspect that municipal corporations differ from what are known as quasi-municipal corporations, such as counties, special districts, and townships. As stated by the Supreme Court of Ohio, "Municipal corporations are called into existence either at the direct solicitation or by the free consent of the persons composing them, for the promotion of their own local and private advantage and convenience." Counties, on the other hand, "are created by the sovereign power of the State, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them."³ Emphasis is placed in one case upon the area incorporated as an instrumentality for the satisfaction of local needs, and in the other on the state agency aspect.

² J. F. Dillon, *op. cit.*, vol. 1, sec. 31. See also E. McQuillin, *Municipal Corporations*, 2d ed., vol. 1, sec. 108.

³ *Hamilton County v. Mighels*, 7 Ohio St. 109 (1857).

METHOD OF CREATING MUNICIPAL CORPORATIONS

A local community is not free to declare itself a city and establish a system of government. As has been pointed out above, its status is a matter of interest to others than those who reside in it, and therefore the state reserves the right to incorporate. During the colonial period charters were granted to municipal corporations by the governor, who acted under authority given by the Crown or the proprietor.⁴ With the Revolution this power of creating municipal corporations passed from the executive to the legislative branch of the government. This transfer was expressly stated in the first constitutions of New York, Pennsylvania, and Maryland; and in all other states this power was vested in the legislature by implication. No state constitution gave the governor power to grant or alter the charters of municipal corporations; and it was early settled that the governor could exercise only those powers which were expressly conferred upon him by the constitution or by law. The legislature, on the other hand, acted under a general and unenumerated grant of legislative power.⁵

The state legislatures began the practice of incorporating municipal corporations by special act, but the abuse of the power of passing special acts dealing with cities led to constitutional provisions prohibiting this practice.⁶ The result was a general law for the incorporation of cities, which is the most common method of creating them today. The more general provisions of acts for the creation of municipal corporations should be noted. Since the creation of municipal corporations with the means of local self-government is a legitimate exercise of the power of sovereignty, and the people of an urban area may not incorporate themselves independently of legislative sanction, such statutes are of significance.⁷

A petition from the inhabitants of the community which proposes to incorporate, and a popular vote on the proposition, is the usual procedure. The petition is sometimes required to be presented to

⁴ J. A. Fairlie, *Essays in Municipal Administration*, chap. iv.

⁵ See H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 3-5.

⁶ See chap. iv.

⁷ E. McQuillin, *op. cit.*, vol. 1, sec. 145.

the judge of a local court, such as the circuit court in Wisconsin, Kentucky, Virginia, and West Virginia, the district court in Iowa, the Quarter sessions court in Georgia, the probate court in Alabama, and the county court in Illinois, Texas, and Colorado. In several states the petition goes to the county board.⁸ The petition is presented to the town supervisor in New York. In Ohio, villages may be organized by petition to the county commissioners without a popular vote.

The number of signers of the petition required for the incorporation of a municipal corporation varies from five taxpayers and residents in Wisconsin to a majority of the taxable inhabitants in Nebraska and Idaho, and to two-thirds of the voters residing within the proposed incorporated area in Kentucky and Arizona. Signatures of 100 legal voters is the requirement in Illinois, 25 adult freeholders in New York, 30 electors in Ohio, and one-third of the qualified voters in North and South Dakota.⁹

The statutes usually provide that the authority to which such a petition is presented must order an election within the proposed municipal corporation to determine whether it shall be formed. In some cases, however, such corporations are established by the county board without a formal vote of the voters of the district. Where such petitions are presented to the judge of some local court, the statutes usually provide that if he finds the petition in conformity with the requirements of the law he shall order an election to enable the voters to pass upon the question of whether the corporation shall be created. In some states, however, the court may, upon petition, create such corporations if it finds that the legal requirements have been properly fulfilled.¹⁰

Where the power granted to the courts is purely ministerial and does not call for the exercise of discretion, such as passing upon the sufficiency of a petition, such statutes will be upheld. But where discretionary power to determine whether the public interest will be promoted by the creation of a municipal corporation is conferred

⁸ Indiana, Minnesota, Missouri, North Dakota, South Dakota, Nebraska, Oklahoma, Arizona, New Mexico, Utah, Idaho, Oregon, and Washington.

⁹ For the number required in other states, see J. A. Fairlie and C. M. Kneier, *County Government and Administration*, pp. 499-500.

¹⁰ In Virginia and Kentucky, where the petition is presented to the courts, no popular vote is required.

upon the courts, such acts have generally been held invalid as a delegation of legislative power.¹¹

A minimum population for a new municipal corporation is frequently required. The number varies from 100 inhabitants in Alabama, Minnesota, and North Dakota, to 500 in Arizona. The number required is generally from 200, as in New York, Vermont, Virginia, Texas, and Idaho, to 300, as in Michigan, Utah, and Washington.

The statutes often provide that the required population must be within a specified area. In New York, the area must not exceed one square mile; in Illinois, two square miles; and in North Dakota, four square miles. In Virginia the area must not be excessive, while in West Virginia there must be a "reasonable amount of territory proportionate to residents therein." The statutes define in various other ways the minimum area required, but the above are sufficiently illustrative of the methods used.

The final step in the creation of a municipal corporation is the promulgation of the order of the court decreeing the establishment of the corporation, or the proclamation of the result of the election if the vote has been favorable, or the filing of the certificate of election by the officer designated by statute. This varies in the different states, being defined by statute. The requirements of the statute having been met, the municipal corporation is formed, and an election is held for the selection of officers.¹²

CREATION OF MUNICIPAL CORPORATIONS AS A DELEGATION OF LEGISLATIVE POWER

The principle that a state legislature cannot delegate its power to make laws is fundamental, but it has been held that this is not violated by the creation of municipal corporations to exercise powers of local self-government. As pointed out by Judge Cooley, the maxim of non-delegation of legislative power "is to be understood in the light of the immemorial practice in this country and

¹¹ J. F. Dillon, *op. cit.*, vol. 1, secs. 61-62; R. W. Cooley, *Handbook of Municipal Corporations*, pp. 29-66, reprinted in Joseph Wright, *Selected Readings in Municipal Problems*, pp. 170 ff.; C. B. Elliott, *The Principles of the Law of Municipal Corporations*, 3rd ed., sec. 35.

¹² R. W. Cooley, *op. cit.*, p. 43.

in England, which has always recognized the propriety and policy of vesting in the municipal organizations certain powers of local regulation, in respect to which the parties immediately interested may fairly be supposed more competent to judge of their needs than any central authority."¹³ Though it is unconstitutional, in the absence of specific constitutional provision, for the legislature to frame a law for the state, conditional on acceptance by the people at large, it is not unconstitutional to delegate to a single community the power to determine whether it will be governed by a particular charter.¹⁴

Conferring upon cities the power either to accept a charter or to exercise quasi-legislative powers for local governmental purposes is thus an exception to the principle that the legislature may not delegate its lawmaking power. As stated by the Supreme Court of the United States, "It is a cardinal principle of our system of government, that local affairs shall be managed by local authorities, and general affairs by the central authority, and hence, while the rule is also fundamental that the power to make laws cannot be delegated, the creation of municipalities exercising local self-government has never been held to trench upon that rule. Such legislation is not regarded as a transfer of general legislative power, but rather as the grant of authority to prescribe local regulations. . . ." ¹⁵ The power to determine whether they shall be incorporated may thus be conferred upon the people of a community; and once the municipality is incorporated, the power to pass ordinances having the force of law may be vested in it.

DE FACTO MUNICIPAL CORPORATIONS

The courts have held that there must be a substantial compliance with the requirements of state laws relative to the creation of

¹³ T. M. Cooley, *Constitutional Limitations*, vol. 1, p. 235; on this point, see also H. L. McBain, "The Delegation of Legislative Power to Cities," 32 *Pol. Sci. Quar.* 276, 391 (1917).

¹⁴ But in Michigan and Wisconsin a grant of power to cities to frame their own charters has been held to be an illegal delegation of legislative power. *Elliot v. City of Detroit*, 121 Mich. 611, 84 N.W. 820 (1899); *State v. Thompson*, 149 Wis. 488, 137 N.W. 21 (1912). The framing and granting of charters were held to be vested in the legislature by the constitution.

¹⁵ *Stoutenburgh v. Hennick*, 129 U.S. 141, 32 L. Ed. 637 (1889).

municipal corporations. In case there is some defect in the procedure for organizing the municipal corporation, the courts may recognize it as existing *de facto*, though it may not be a *de jure* corporation. The view generally taken in such cases is that there must be a statute in existence under which a *de jure* corporation might have been organized; there must be a bona fide, even though defective, attempt to organize under this law; and there must be an assumption and use of the powers of a municipal corporation.¹⁶

The Supreme Court of Wisconsin has stated the law relative to the existence of *de facto* municipal corporations as follows:

Wherever there is a valid law under which a corporation with the powers assumed might have been lawfully incorporated and there is an attempt, apparently in good faith, to comply with the requirements of such law, and the corporation thus attempted to be created is organized and enters upon the transaction of business, its existence as a *de facto* corporation is established, even though it has failed to comply with the law in some particular which prevents it from being a corporation *de jure*. . . . But where there is no law authorizing a particular corporation *de jure* there can be no such corporation *de facto*. . . . Where there is, apparently, no attempt in good faith to comply with certain substantial requirements of the law authorizing such incorporation—nothing sufficient to give color to the incorporation—the body attempted to be incorporated will not be regarded as a corporation *de facto*.¹⁷

The general view taken by the courts is that a *de facto* municipal corporation may legally perform every act which it could perform were it a corporation *de jure*. Only the state may attack the existence of such a corporation, and then the proceedings must be brought by it directly for that purpose. Thus "where a reputed corporation is acting under forms of law, unchallenged by the state, the validity of its organization cannot be drawn in question by private parties."¹⁸

¹⁶ C. B. Elliott, *op. cit.*, sec. 36; J. F. Dillon, *op. cit.*, vol. 1, sec. 167; R. W. Cooley, *op. cit.*, p. 43.

¹⁷ *Gilkey v. How*, 105 Wis. 41, 45, 46, 81 N.W. 120 (1899). Also see E. McQuillin, *op. cit.*, vol. 1, sec. 175.

¹⁸ *Miller v. Perris Irrigation Dist.*, 85 Fed. 693, 699 (1898). Also see O. P. Field, "The Status of a Municipal Corporation Organized Under an Unconstitutional Statute," 27 *Mich. Law Rev.* 523 (Mar., 1929); C. W. Tooke, "De Facto Municipal Corporations Under Unconstitutional Statutes," 37 *Yale Law Jour.* 935 (May, 1928).

CREATION OF MUNICIPAL CORPORATIONS
BY IMPLICATION OR PRESCRIPTION

The courts hold that municipal corporations may be created by implication as well as by a positive and specific expression of statute. In such cases the intent of the legislature is the determining factor as to whether such a corporation exists. Inquiry into the original organization of a municipal corporation is precluded, and the courts will presume its legal existence where it has been recognized by enactments of the legislature. The general view is that incorporation will be implied from official recognition of it by the state legislature. For example, incorporation has been implied where, by act of the legislature, other territory was annexed to the town, or specified lands were granted to it for town commons. Such acts are held to show constructively the intent of the legislature to create a municipal corporation.

It follows from this principle that the recognition by the legislature of a *de facto* corporation as valid operates to cure all defects in its organization. Such action on the part of the legislature makes a *de jure* corporation where, before, its existence was only *de facto*.¹⁹

It has also been held that the corporate existence of a municipality may be established by proof that it has acted as a corporation for a long period of years and that there was a law under which it might have been incorporated. In cases where no charter or act of incorporation could be found, it has been held that incorporation may be shown from the fact that the community had exercised the powers of a municipal corporation for a long period, such as twenty, thirty, or fifty years. The title of the municipal corporation in such a case is said to be based on prescription.²⁰

When small urban centers are incorporated as municipal corporations they are usually known popularly, and also referred to in the statutes, as villages and towns. These less populous municipalities are called boroughs in Connecticut, New Jersey, and Pennsylvania. Such places may change to a city organization after they have

¹⁹ E. McQuillin, *op. cit.*, vol. 1, sec. 176; R. W. Cooley, *op. cit.*, pp. 29-66.

²⁰ C. B. Elliott, *op. cit.*, sec. 28.

reached the minimum population required. The minimum population required for cities is 10,000 in New York, Pennsylvania, and Texas. In many cases, however, a village or borough increases in population beyond this limit without making a change to a city.²¹ The minimum population for a city is much lower in other states. In Ohio, Virginia, and Louisiana it is 5000; in Missouri and Minnesota the minimum is 3000; in Arkansas, 2500; in Alabama, 2000; in Washington, 1500; and in Illinois, Nebraska, and Montana, 1000.

MUNICIPAL BOUNDARIES

In the petition for incorporation the boundaries of the proposed municipality are designated. If favorable action is taken, these become the boundaries of the new municipal corporation. The state legislature may, in the absence of constitutional restriction, alter or change the boundaries by annexing or detaching territory. Such changes may be made by either general or special law. Constitutional restrictions in several states, however, prohibit changes in municipal boundaries by special legislative act.²²

Provision has been made by general statute for changes in municipal boundaries. These statutes usually provide that such boundaries shall be extended only upon the consent of a majority of the inhabitants of the district sought to be annexed, and of either the voters or the city council of the city to which the area is to be attached. Though municipal councils in a few states are authorized to extend municipal boundaries without the consent of the people in the area so incorporated, with few exceptions changes in municipal boundaries are submitted to a vote of the voters affected. In a few cases the determination of when the conditions justifying annexation exist has been placed in the hands of a special board or tribunal.

The courts have generally held that, under the statutes, the question of the extension of corporate limits is subject to judicial review. Where such extension is found to be unreasonable, it is

²¹ The village of Oak Park, Illinois, has a population of 66,015.

²² E. McQuillin, *op. cit.*, vol. 1, secs. 279-313; C. B. Elliott, *op. cit.*, chap. xxii.

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clared void. If a section will receive no benefit from incorporation in the city, such annexation will not be sustained.²³ As the legislature may extend municipal boundaries, it may also attach territory. Statutes have been passed providing the procedure and the conditions required for the detachment of territory.²⁴ The methods usually provided for the detachment of territory from a municipal corporation are: (1) special election, (2) petition to the board or to the council, and (3) petition to a court.²⁵ In home-rule states, cities may not change their boundaries by amending their charters. A constitutional grant of home rule does not take from the state legislature power over this question.²⁶

DISSOLUTION OF MUNICIPAL CORPORATIONS

A judicial decree or legislative act is necessary to dissolve a municipal corporation. This action may be taken only in the manner prescribed by law. The failure to use its powers, in whole or in part, for a term of years does not dissolve or destroy the municipal corporation. As McQuillin says: "In such case the municipal corporation would be suspended for the time, but not civilly dead, and its dormant functions could be revived without action on the part of the sovereignty, the sources from which, in theory of law, corporate life originally came."²⁷ Unless the statutes of the state provide, failure to elect officers to conduct its government does not operate to dissolve or destroy the corporation. In actual practice,

McKeon v. Council Bluffs, 206 Ia. 556, 221 N.W. 351 (1928); Vestal v. Little Rock, 54 Ark. 321, 15 S.W. 891 (1891). On the inclusion of non-contiguous lands within a municipality, see Chimney Rock Co. v. Town of Lure, 200 N.C. 171, 156 S.E. 542 (1931); Morgan Park v. Chicago, 255 Ill. 190, 99 N.E. 388 (1912); Chicago N.W.R.R. Co. v. Oconto, 50 Wis. 189, 1 N.W. 607 (1880); 9 *Harvard Law Rev.* 153 (May, 1895); 20 *Nat. Mun. Rev.* 10 (Apr., 1931).

²⁴ J. D. Robb, "The Effect of the Alteration or Abolition of a Municipal Corporation upon Its Debts," 7 *Minn. Law Rev.* 388 (Apr., 1923).

²⁵ On methods of detaching territory from a municipal corporation, see note in 27 *Mich. Law Rev.* 567 (Mar., 1929); 14 *Iowa Law Rev.* 234 (Feb., 1929).

²⁶ H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 146-149, 269-271, 407-410, 499; J. D. McGoldrick, *Law and Practice of Municipal Home Rule, 1916-1930*, pp. 328-329.

²⁷ E. McQuillin, *op. cit.*, vol. 1, sec. 317; J. F. Dillon, *op. cit.*, vol. 1, chap. ix.

however, many small villages and towns lose population and cease to function as governments without going through the legal formality of dissolving.²⁸ If there are no debts or other obligations, there is no one to question the failure to continue to exercise the powers of a municipal corporation.

State statutes which prescribe the method of dissolving municipal corporations usually provide that when a designated number of voters of a town or village desire its dissolution, they may petition a named court, which then orders an election to be held upon the question. In some states the petition is presented to the legislative body of the village or town. And in some states the court or legislative body may disincorporate municipal corporations upon petition, no popular vote being required on the question.²⁹

When one considers the total number of incorporated places in the United States (over 16,000), the number of new incorporations or dissolutions appears small. In his study of units of government made in 1944, William Anderson found that in 18 states there had been a decrease in incorporated places since 1933, totaling 412; there had been an increase in 22 states of 308; and in eight states there had been no change. The net decrease was 104, or less than 1 per cent.³⁰

LEGAL NATURE OF MUNICIPAL CORPORATIONS

A municipal corporation is, according to Dillon, "the body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purposes of local government thereof."³¹ As has been pointed out earlier in this chapter, such a corporation may be created only by authority of the state. The municipal corporation is a device by which the people living in a particular community are authorized to incorporate and exercise governmental powers of legislation and regulation with respect to their local

²⁸ William Anderson, *The Units of Government in the United States*, p. 3.

²⁹ C. W. Tooke, "Discretion of Courts in Actions to Dissolve Municipal Corporations," 6 *New York University Law Rev.* 112 (Jan., 1929). For the rights of creditors of extinct municipal corporations, see E. McQuillin, *op. cit.*, vol. 1, secs. 326 ff.; J. F. Dillon, *op. cit.*, vol. 1, secs. 335 ff.

³⁰ William Anderson, *op. cit.*, p. 5.

³¹ J. F. Dillon, *op. cit.*, vol. 1, sec. 31.

problems. It is a legal person, created by authority of the state for the purpose of securing more adequate government in local communities. It acts partly as an agent of the state and partly as an instrumentality to meet local needs. As a legal person, the municipal corporation can sue and may be sued, own and sell property—subject to such regulations as its creator, the state, may impose.

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Legislative Control Over Cities

In the absence of constitutional limitations, the state legislature has complete plenary control over municipal corporations. As the Supreme Court of the United States has held, municipal corporations "may be created, or, having been created, their powers may be restricted or enlarged or altogether withdrawn at the will of the legislature."¹ The same Court has said that "a municipality is merely a department of the State, and the State may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the State exercising and holding powers and privileges subject to the sovereign will."² The consent of the people of a locality is not a necessary condition to their organization by the legislature as a municipal corporation. Nor is their consent necessary to the abolition of the municipality.³ In actual practice, however, municipal corporations are formed only with the consent of the persons composing them. It is in this respect that they differ from counties and other quasi-municipal corporations.

A study of the actual use of this plenary power of the state legislature over cities indicates its possible abuses. The passage of the Metropolitan Police Act in New York in 1857 illustrates the use of central interference in municipal affairs without the consent of the people of a city. By this act the legislature provided for the creation of a metropolitan police district, which included not only

¹ *Atkins v. Kansas*, 191 U.S. 207, 48 Law. Ed. 148 (1903).

² *Trenton v. New Jersey*, 262 U.S. 182, 67 Law. Ed. 937 (1923). Also see *Hunter v. Pittsburgh*, 207 U.S. 161, 52 Law. Ed. 151 (1907).

³ J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed., vol. 1, sec. 69; C. B. Elliott, *The Principles of the Law of Municipal Corporations*, 3rd ed., chap. ii.

New York City but certain outlying districts. At the head of this district there was placed a commission appointed by the governor and the senate. The people of the city resisted the enforcement of the act, the resistance leading to actual bloodshed. The validity of the act was upheld by the courts of the state.⁴

The legislature of New York by similar acts later took control of the police of Albany, Schenectady, Troy, and Buffalo.⁵ And such legislation was extended to other fields, such as fire, health, liquor control, and parks.⁶ State-appointed boards to control municipal functions spread to other states. The legislature of Michigan provided a state-appointed police commission and a state-appointed health board for Detroit.⁷ State control of police still exists in Boston, Baltimore, St. Louis, and Kansas City. Such acts providing for state control over municipal functions were generally upheld by the courts.⁸

The building of the Philadelphia City Hall affords another illustration of legislative interference in municipal affairs. In 1870 the legislature of Pennsylvania decided that Philadelphia needed new city buildings and proceeded to pass an act to accomplish this purpose. The act named certain citizens as commissioners for the erection of the buildings. The body was made perpetual, having the power to fill vacancies. The commission was given the power to create debts and to require the levy of taxes for their payment. Though the city protested, the act was declared constitutional and, in the words of the judge upholding the act, the buildings were "projected upon a scale of magnificence better suited for the capital of an empire than the municipal buildings of a debt-burdened city."⁹

⁴ *People v. Draper*, 15 N.Y. 532 (1857); R. B. Fosdick, *American Police Systems*, pp. 80-90; T. H. Reed and Paul Webbink, *Documents Illustrative of American Municipal Government*, sec. 36.

⁵ H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 35 ff.

⁶ F. J. Goodnow, *Municipal Home Rule*, pp. 21-22.

⁷ *People v. Mahaney*, 13 Mich. 481 (1865); *Davock v. Moore*, 105 Mich. 120 (1895).

⁸ *Brodhine v. Revere*, 182 Mass. 498, 66 N. E. 607 (1903); *Hartford v. Maslen*, 76 Conn. 599, 57 Atl. 740 (1904); *Baltimore v. State*, 15 Md. 376 (1859); *State v. Hunter*, 38 Kan. 578, 17 Pac. 177 (1888); *Burch v. Hardwicks*, 30 Grat. (Va.) 24 (1878). For the contra view, see the section on the doctrine of an inherent right of local self-government, pp. 71 ff.

⁹ *Perkins v. Slack*, 86 Pa. St. 270 (1878).

State control over municipal affairs was often used for partisan purposes. It is interesting to note that in New York, state interference in municipal affairs developed with the passing of the state into the hands of the growing Republican party while New York City remained Democratic.¹⁰ The fact that St. Louis was a Republican stronghold in a Democratic state seems to account for legislative interference in the affairs of that city.¹¹ By setting up a state-appointed board with control over a municipal function, large powers of appointment could be wrested from the party in control of the city.¹² In 1861 the legislature of Illinois provided that the board of police commissioners in Chicago should be appointed by the governor with the consent of the senate. "This act was prompted solely by partisan politics. The Republicans controlled the state government while the city of Chicago was in the hands of the Democrats. The board appointed by the governor in compliance with the act was entirely Republican in complexion and the force for the next two years was managed entirely in the interests of the party."¹³ During the administration of Mayor Jones in Toledo, the Republican party organization of that city secured the passage of an act which deprived the mayor of his control over the police force. The control of the police was vested in a commission appointed by the governor of the state.¹⁴

The so-called ripper legislation of 1901 in Pennsylvania also illustrates the use of legislative control over cities for partisan purposes. This act abolished the elective office of mayor in Pittsburgh, Allegheny, and Scranton, and created the office of recorder to take over the duties of the mayor in these cities. The appointment and removal of the recorder were placed entirely in the hands of the governor. The scheme was devised by Senator Quay to punish local

¹⁰ E. L. Godkin, "The Problems of Municipal Government," 4 *Annals of the American Academy of Political and Social Science* 857, 866 (1894); F. J. Goodnow, *op. cit.*, p. 26.

¹¹ Charles Nagel, "The Municipal Situation in St. Louis," *Rochester Conference for Good City Government*, 1901, p. 108.

¹² The plenary power of the legislature over cities was also used to force payment of claims not enforceable in the courts but held by persons possessed of political influence.

¹³ R. B. Fosdick, *op. cit.*, p. 93.

¹⁴ Brand Whitlock, *Forty Years of It*, p. 135.

bosses who had opposed him in building up his state political machine.¹⁵

In 1889 an act was passed in Florida providing for the appointment by the governor of the city council of Jacksonville. The council in turn selected the mayor and other municipal officers. The purpose of the act was to prevent the Republicans, including many Negroes, who cast the majority of votes in the city, from gaining control of the city government.¹⁶

Legislative interference in municipal affairs is not, however, always for partisan advantage. Often it is desirable, if not necessary, and is sought by the responsible citizens of the city. State control of police in Kansas City, after being abandoned for a few years, was reestablished at the time of the investigation of conditions there which resulted in the conviction and imprisonment of Boss Pendergast. State interference in local financial administration has in some cases been the result of mismanagement by cities. Provision has been made in some states for a receivership by state authorities of the finances of cities which default on their obligations. The object is to get the finances of the city back on a sound basis.

In some cases state legislatures have gone so far as to abolish a municipality, as in the case of the legislative acts of 1879 in Tennessee relative to the city of Memphis. That city was bankrupt, and to relieve the situation the legislature passed three acts. The first repealed the city's charter; the second set up a new unit of local government, the Taxing District of Shelby County, in place of the city of Memphis; and the third provided for the administration of taxes due the abolished city in the interest of its creditors. Under this legislation a majority of the members of the governing body were appointed by the governor and quarterly court.¹⁷

The constitutionality of this legislation was upheld by the Supreme Court of the United States. In considering the power of a state legislature to abolish a municipal corporation, the Court said:

The right of the State to repeal the charter of Memphis cannot be questioned. Municipal corporations are mere instrumentalities of the State

¹⁵ C. R. Woodruff, "Ripping" as a Fine Art," 54 *Independent* 400 (Feb. 13, 1902).

¹⁶ A. R. Conkling, *City Government in the United States*, p. 29.

¹⁷ T. H. Reed and Paul Webbink, *op. cit.*, sec. 35.

for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged or entirely withdrawn at its pleasure. . . . There is no contract between the State and the public that the charter of a city shall not be at all times subject to legislative control.¹⁸

Similar action was taken by the legislature of Alabama in 1879, when the charter of Mobile was vacated and annulled and provision was made for the appointment by the governor of three commissioners to administer the assets of the defunct municipality. A new corporation, the Port of Mobile, was set up by the legislature in place of the abolished municipality. The new corporation was governed by a body of eight elective members.¹⁹

In 1882 an act was passed by the legislature of Alabama "to vacate and annul the charter and dissolve the corporation of the City of Selma." The act repealed the charter of the city, declared the corporation dissolved, abolished all municipal offices, and declared that all powers of taxation given to the city were resumed by and lodged in the legislature. All property, real and personal, held by the city for governmental or other public purposes was transferred by the act to the custody and control of the State of Alabama. The inhabitants and territory within the territorial limits and jurisdiction of the corporation were, by the act, resolved into the body of the state.²⁰

These cases indicate that the plenary power of the state legislature over cities is more than a legal theory. In fact, the legal doctrine developed as a result of the cases which came before the courts when this power of control was used by the state.

STATE CONTROL OVER MUNICIPAL PROPERTY

Legislative control over property held by a city differs somewhat from the general principles of control over municipal powers and organization discussed above. The courts draw a distinction between property held by a city in its public capacity and that held

¹⁸ *Meriwether v. Garrett*, 102 U.S. 501, 511 (1880).

¹⁹ *Mobile v. Watson*, 116 U. S. 289 (1885).

²⁰ *Amy and Co. v. Selma*, 77 Ala. 103 (1884). For a more recent illustration of this type of legislative action, see S. Frazer, "The New Jersey Ripper Bills," 21 *Nat. Mun. Rev.* 118 (Feb., 1932).

in its private or proprietary capacity. However, no satisfactory test has been laid down by the courts to determine the class in which a particular function falls.²¹ The management of public buildings, police and fire departments, jails, schools, hospitals, and health departments is usually held to be done by the city in its public capacity. The management of waterworks, lighting systems, gas works, public markets, and cemeteries is generally held to be done by the city in its private or proprietary capacity.²²

The leading case on the subject of state control over municipal property is that of *Proprietors of Mount Hope Cemetery v. Boston*,²³ decided by the Supreme Judicial Court of Massachusetts in 1893. Acting under legislative authorization, the city of Boston had acquired a burial ground. A subsequent act of the legislature provided that the city, without compensation, should convey this property to a corporation formed for the purpose of taking over this function. In holding the act unconstitutional, the court said: "By a quite general concurrence of opinion . . . this legislative power of control is not universal and does not extend to property acquired by a city or town for special purposes not deemed strictly and exclusively public and political, but in respect to which a city or town is deemed rather to have a right of private ownership of which it cannot be deprived against its will save by the right of eminent domain with the payment of compensation."

Another case which arose in Boston leaves the question of state control over municipal property uncertain and unsatisfactory. Acting under authority granted by an act of the state legislature, the city of Boston had built and leased a subway to a private corporation. In order to insure against legislative interference, the act expressly provided that the "city shall have, hold and enjoy in its private or proprietary capacity, for its own property," any subways built under the act. The legislature subsequently passed an act which provided for a state-appointed board of trustees, who, on acceptance of the provisions of the act by the company which had

²¹ D. W. Doddridge, "Distinction Between Governmental and Proprietary Functions of Municipal Corporations," 23 *Mich. Law Rev.* 325 (Feb., 1925). Also see F. J. Goodnow, *op. cit.*, chap. ix.

²² W. C. F., Jr., "The Control of Legislatures over Municipal Property," 71 *University of Penn. Law Rev.* 265 (Mar., 1923).

²³ 158 Mass. 509, 33 N.E. 695 (1893).

leased the subways from the city, were to take over the management of the subways. The act further provided that these trustees should levy, as an additional state tax, the deficit incurred in their operation among the cities benefited. The act was sustained by the Supreme Judicial Court of Massachusetts, and on appeal its decision was affirmed by the Supreme Court of the United States.²⁴ The case raises the question as to whether there is any property held by a city in its corporate or proprietary capacity and immune from state control.²⁵ Other recent cases seem to indicate that "no such vested right exists as against the state even in respect of such property as is usually termed private."²⁶

MUNICIPAL ATTACKS ON THE LEGALITY OF LEGISLATIVE CONTROL

Cities have not accepted this principle of complete legislative control without resistance. They have put up a determined fight to resist it, but in most cases to no avail. The arguments used by the cities to attack the validity of such control will now be considered.

Cities have attempted to use the contract clause of the federal Constitution to check state interference with their affairs.²⁷ The Constitution provides that no state shall pass any law impairing the obligation of contract. In the Dartmouth College case the court held that a corporate charter issued by public authority constituted a contract.²⁸ It was intimated, however, that this doctrine would not apply to the charters of public corporations. When the question was later presented to the court, it was held that the relation existing between cities and the state is not contractual in nature. In a

²⁴ *Boston v. Treasurer and Receiver General*, 237 Mass. 403, 130 N.E. 390 (1921); *Boston v. Jackson*, 260 U.S. 309, 67 Law. Ed. 274 (1922).

²⁵ The act was so worded that the tax could be sustained by the court as a state tax "to achieve a state purpose, and Boston in its public and political character was a mere state agency for the collection." See note in 36 *Harvard Law Rev.* 465 (Feb., 1923) on "The Distinction Between Publicly and Privately Owned Municipal Property."

²⁶ D. W. Doddridge, *op. cit.*

²⁷ H. L. McBain, "The Rights of Municipal Corporations Under the Contract Clause of the Federal Constitution," 3 *Nat. Mun. Rev.* 284 (Apr., 1914).

²⁸ *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518 (1819).

case before it in 1879, the Supreme Court in considering this question said: "They [municipal corporations] cannot have the least pretension to sustain their privileges or their existence upon anything like a contract between themselves and the legislature of the state, because there is not and cannot be any reciprocity of stipulation between the parties and for the further reason that their objects and duties are utterly incompatible with everything partaking of the nature of compact."²⁹ This view has been reaffirmed in other cases.³⁰

Contracts made by a city with private individuals are protected by the obligation of contract clause. State legislatures in legislating for cities are thus limited by the provisions of such contracts. The legislature of the State of Illinois authorized the cities of that state to issue bonds to subscribe to the stock of railroads and to levy a special annual tax to pay the interest on these bonds. After the city of Quincy had issued bonds under this act, it was repealed by the legislature, and the city defaulted on the bonds. The repealing act was held unconstitutional as an impairment of the contract between the city and the purchasers of the bonds. In considering the question, the Supreme Court of the United States said:

It is equally clear that where a State has authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The State and the corporation in such cases are equally bound. The power given becomes a trust which the donor cannot annul, and the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way than in any other.³¹

Contracts between the city and an individual or a corporation are thus subject to the contract clause of the Constitution, which tends to serve as a check upon legislative control. It must be said,

²⁹ *Mt. Pleasant v. Beckwith*, 100 U.S. 514 (1879).

³⁰ *Hunter v. Pittsburgh*, 207 U.S. 161 (1907); *Meriwether v. Garrett*, 102 U.S. 472, 511 (1880); *Rogers v. Burlington*, 3 Wall. 654 (1865); *New Orleans v. Clarke*, 95 U.S. 644 (1877). Also see J. F. Dillon, *op. cit.*, vol. 1, sec. 92.

³¹ *Von Hoffman v. City of Quincy*, 4 Wall. 535, 554 (1867). Also see *Wolff v. New Orleans*, 103 U.S. 358 (1880); *Broughton v. Pensacola*, 93 U.S. 266 (1876).

however, that this has not proved to be an effective deterrent to legislative domination over cities.

The section of the Fourteenth Amendment which provides that no state shall deprive any person of life, liberty, or property without due process of law has also been relied upon by cities to check legislative interference in their affairs. The city as a legal person has received only limited protection from this provision. In the few cases in which an attempt has been made by the legislature to transfer the property of a city to private persons, such acts have been held to be lacking in due process of law. Where the legislature has sought to transfer property of the city to another governmental agency, however, the doctrine of legislative supremacy has been upheld, and such action has been held not to deprive the city of property without due process of law.³²

In several cases curative acts have been passed for the allowance of claims against a city. While in most cases the legislature was merely attempting to meet a just claim by the removal of a technical irregularity, there are some cases in which the courts have upheld acts creating claims against the city where in reality none of any kind existed. In view of this situation, Professor McBain stated that "on the whole the city has enjoyed nothing like the degree of protection which a private person or corporation in similar plight might have invoked under the requirement of due process of law."³³

There are only a few cases where a city has relied upon the provision of the Constitution guaranteeing equal protection of the laws to attack legislative domination and interference. The argument that this provision is applicable to municipal corporations has been denied.³⁴

DOCTRINE OF AN INHERENT RIGHT OF LOCAL SELF-GOVERNMENT

The courts of a few states followed for a time a doctrine other than that discussed in the preceding pages. This doctrine was to the

³² H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 22 ff.

³³ *Ibid.*, p. 25, note 2.

³⁴ Cf. *ibid.*, p. 26.

effect that, even in the absence of any express constitutional provisions, municipal corporations enjoy certain inherent rights of local self-government. This principle, which was first formulated by Judge Cooley in 1871,³⁵ was later applied for a time in Indiana, Kentucky, Iowa, Nebraska, and Texas.³⁶

This principle was based on the theory that municipalities are the successors of the counties, hundreds, and towns of England. When the settlers came to this country, they brought these forms of organization, each of which involved the right to govern its own affairs. It was argued that the constitutions were formed when this right was recognized and that it was not given up unless the constitutions specifically so provided. The vesting of legislative power in the state legislature could not be construed as an intent to surrender this power.³⁷

The doctrine was never widely accepted and has little if any weight today. The Supreme Court of Nebraska, after following this principle for a time, later reversed its position, saying: "So far as a city is concerned, considered in the character of an artificial being, it is a creature of the legislature. It can have no rights save those bestowed upon it by its creator. As it might have been created lacking some right bestowed upon it, it is in no position to complain should the power that bestowed such right see fit to take it away."³⁸ According to Dillon, "It must now be conceded that the great weight of authority denies *in toto* the existence, in the absence of special constitutional provisions, of any inherent right of local self-government which is beyond legislative control."³⁹

³⁵ *People v. Hurlbut*, 24 Mich. 44 (1871).

³⁶ H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 13-15; H. L. McBain, "Doctrine of an Inherent Right of Local Self-Government," 16 *Columbia Law Rev.* 190 (1916); A. M. Eaton, "The Origin of Municipal Incorporation in England and the United States," 25 *Reports of American Bar Association* 291-372 (1902); note in 3 *Wisconsin Law Rev.* 423 (Apr., 1926).

³⁷ A. M. Eaton, "The Right to Local Self-Government," 13 *Harvard Law Rev.* 441, 570, 638 (1900); 14 *ibid.*, 20, 116 (1900); J. F. Dillon, *op. cit.*, vol. 1, sec. 99.

³⁸ *Redell v. Moores*, 63 Neb. 219, 88 N.W. 243 (1901). See also *State v. Smith*, 44 Ohio St. 348, 7 N.E. 447 (1886); *Commonwealth v. Plaisted*, 148 Mass. 375, 19 N.E. 224 (1889).

³⁹ J. F. Dillon, *op. cit.*, vol. 1, sec. 98. Also see *City of Trenton v. New Jersey*, 262 U.S. 182, 67 Law. Ed. 937 (1923).

CONSTITUTIONAL LIMITATIONS ON
STATE LEGISLATURES

It has been noted in the preceding discussion that the provisions of the federal Constitution have not been an effective check on state legislative control over cities. Failing to secure protection from such domination under the contract, due process, and equal protection clauses of the federal Constitution, cities turned to state constitutional conventions to secure limitations on legislative action. Consideration will now be given to the more important constitutional provisions (other than home rule provisions, which will be discussed in the following chapter) limiting state legislatures in dealing with cities.⁴⁰ The situation which led to the particular type of provision as well as the effectiveness of the provision will be discussed.

One of the earliest constitutional limitations on state legislative control over cities was that requiring the local selection of city officers. Such a provision was placed in the Louisiana constitution of 1812, but it was limited to the town of New Orleans. The New Orleans charter of 1805, which had been issued by the territorial legislature, had provided for the appointment of the mayor by the governor. The change in method of selection was probably an outgrowth of a belief in a more democratic system of local selection rather than of any specific legislative abuses.

The colonial practice of central appointment of mayors was continued in New York after the establishment of a state government. However, the New York constitution of 1821 provided that the mayors in all cities should be appointed annually by the city councils. This was amended in 1833 to provide that they should be elected by direct vote of the people. In 1846 a more comprehensive provision was inserted in the constitution, to the effect that: "All city, town, and village officers, whose election or appointment is

⁴⁰ Only the constitutional provisions that are direct limitations on legislative action will be considered in this chapter. Constitutional limitations on municipal indebtedness are aimed primarily to limit cities; indirectly they restrict the legislature by taking from it control over this question. For a discussion of the constitutional limitation of municipal indebtedness, see chap. xxx.

not provided for by this constitution shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose."⁴¹ Constitutional provisions providing for the local selection of municipal officers were adopted in Wisconsin in 1848; and in Virginia, Michigan, and Kentucky in 1850.

As a result of judicial construction, however, such provisions did not always prove effective. Despite the constitutional provision in New York quoted above, laws were passed creating special commissions to construct municipal buildings and bridges, and to lay out boulevards and parks. The members of these commissions were usually named by the legislature itself. Such acts were upheld by the courts on the ground that the constitutional provision did not prohibit the central control of officers who were to perform temporary functions within a city but only of those officers "entrusted with the performance of permanent functions of the city government."⁴²

The New York constitutional provision referred to above also stipulated that: "All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct." The legislature devised the scheme of abolishing an existing city office and providing for the creation of a larger district, with central appointment of the officers of the district to perform the functions formerly entrusted to city officers. The courts upheld such legislation on the ground that these were officers whose office had been created by law after the adoption of the constitutional provision of 1846. It was on this line of reasoning that the act of 1857 establishing the Metropolitan Police District was sustained.

This provision in the New York constitution was also rendered less effective by a judicial ruling that officers in cities might be appointed by state authority, provided the functions performed

⁴¹ *Constitution of New York*, Art. X, sec. 2. *Illinois Constitutional Convention Bulletins*, 1920, p. 400.

⁴² For a list of cases involving this question, see H. L. McBain, *The Law and the Practice of Municipal Home Rule*, pp. 35-40. This book contains an excellent discussion of the various methods used to evade the constitutional provision in New York regarding the local selection of municipal officers.

by them had not been performed in the particular city by some local officer prior to 1846. Under this principle, as new services or functions were developed, the officers to whom their performance was entrusted need not be selected locally.

As has been pointed out earlier in this chapter, the creation and appointment of special commissions to control municipal affairs were quite common in the period following 1850. This practice became especially serious following the Civil War. To meet this situation, constitutional provisions prohibiting the legislature from passing any special acts appointing commissions to perform municipal functions or to regulate municipal affairs, were adopted in several states.⁴³

Another legislative abuse which developed in the period around 1850 was for the legislature, by special act, to grant permission to street railways to lay their tracks in the streets. In some cases these grants required local consent, but in many cases they were made in perpetuity or for long periods of time without the consent and even over the protest of the local communities. The cities were forced to resort to constitutional conventions to check this practice. Missouri led the way when in 1865 a provision was incorporated in the constitution providing that the legislature should not by special act grant to any individual or company the right to lay railroad tracks in the streets of any city or town. Illinois followed in 1870 with a constitutional provision which stated that the legislature should enact no law "granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having control of the street or highway." Similar constitutional provisions were adopted in other states.

Legislative interference in municipal affairs often took the form of special legislation. An act would be passed which applied to a single city. Most special acts in the earlier period were drafted in local communities, or at least embodied ideas desired by people there. Later, however, state legislatures began to act on their own initiative and in many cases used their power for partisan purposes. They did not confine themselves to broad general principles of

⁴³ Pennsylvania, 1873; New Jersey, 1875; Colorado, 1876; California, 1879; Montana and Wyoming, 1889; Utah, 1895. *Ibid.*, pp. 45 ff.

city government but legislated on detailed matters which should have been left to regulation by municipal ordinances.⁴⁴

State legislatures gave a large part of their time to special acts affecting cities, and the total mass of such enactments was great. In Illinois in 1869 there were 1850 pages of laws relating to local government, whereas the general statutes for that year occupied only one volume of 290 pages.⁴⁵ In Minnesota, from 1857 to 1881, there were 4167 special laws but only 2689 general laws. And in Pennsylvania in the period 1866-1870, there were 7126 private acts and only 240 public acts. Four hundred acts relating to the city of Boston alone were passed in Massachusetts between 1885 and 1908. The New York legislature passed 390 acts for New York City in the period 1880-1889. The charter of Jersey City was revised 91 times between 1835 and 1875. In Minnesota the date of municipal elections in St. Paul was changed three times in four years.⁴⁶

The evil of special legislation for cities became serious. The number of such acts made their adequate consideration by the legislature impossible. The fate of such legislation was often determined by the attitude of the legislator from the district in which the city was located. Logrolling in the passing of such legislation became an art. In too many cases the welfare and wishes of the city concerned in the matter were not considered. The legislature saw its opportunity for political spoils in control over cities, and it took advantage of the opportunity.

It was necessary to resort to constitutional conventions to check this evil of special legislation. The constitutional conventions which met in Ohio and Indiana in 1850-1851 were the first specifically to prohibit special legislation for cities. The movement for the prohibition of such legislation by constitutional provision spread to other states, until such provisions are now found in the constitutions of more than three-fourths of the states.⁴⁷

⁴⁴ Isidor Loeb, "Municipal Home Rule in Missouri," *Proceedings of the Fourth Annual Convention of Illinois Municipal League*, 1917, p. 43.

⁴⁵ *Illinois Constitutional Convention Bulletins*, 1920, p. 384.

⁴⁶ See E. S. Griffith, *The Modern Development of City Government*, vol. 1, pp. 71-72, on the use of special legislation for cities in this period. Also see T. H. Reed, "Municipal Home Rule in California," 1 *Nat. Mun. Rev.* 569 (Oct., 1912).

⁴⁷ H. L. McBain, *The Law and the Practice of Municipal Home Rule*, chap. iii, presents an excellent picture of the background and development of this movement.

The practice developed of classifying cities for legislative purposes. This was a sensible approach to the question of legislative control since municipal problems vary in part with the size of the city. Obviously the problems of a city having a population of 1,000,000 will differ from those of a village of 1000; and by classification the legislature can meet the problems arising in cities in a particular population group. Abuses soon developed in the use of the classification device in legislating for cities, the object being in most cases to evade constitutional limitations on special legislation. In Ohio the number of classes grew until finally cities were so classified that in several cases a single city constituted one class. As one writer put it, "The constitutional requirement of general legislation was in course of time so completely circumvented by this subterfuge that the situation became little short of ridiculous."⁴⁸ The Supreme Court of Ohio, in a decision handed down in 1902, ended this practice, holding the classification of cities for any purpose to be unconstitutional.⁴⁹ To meet the situation, the legislature was called in extra session, and a uniform statute applicable to all the cities in the state was passed.

Classification of cities on the basis of population, however, has been and still is upheld by the courts in states which prohibit special legislation. In passing upon the constitutionality of this legislation, the courts consider whether there is any substantial reason for such classification. Population has been held to be a proper basis for classifying cities in the enactment of a law providing for the commission form of government or one creating commissions or boards to manage streets. But classification on the basis of population in a law authorizing cities to lease wharves or to issue bonds to pay a floating debt has been held unconstitutional as special legislation. In the latter cases there appears to be no natural connection between the purposes of the law and the population of the city.⁵⁰

The fact that under classification on the basis of population a law applies to only one city does not render the law unconstitu-

⁴⁸ *Ibid.*, p. 73.

⁴⁹ *State v. Jones*, 66 Ohio St. 453, 64 N.E. 424 (1902).

⁵⁰ C. B. Elliott, *op. cit.*, chap. ii; E. McQuillin, *The Law of Municipal Corporations*, vol. 1, sec. 222.

tional.⁵¹ It must be so worded, however, that when other cities reach the population class they may take advantage of the powers or benefits conferred. Even though the classification is based on population, if the statute is necessarily restricted to one city and is so worded as to preclude its ever being applied to another city, it is held to be special legislation and therefore unconstitutional.⁵²

The fallacy of the line of reasoning used by the courts in holding that a law based on such a classification of cities that only one city is in a class is not special legislation may be seen in its practical results. The Pennsylvania legislature in 1874 classified cities on the basis of population; all cities of 300,000 or more being in the first class. Although Philadelphia was the only city in that class, this legislation was upheld by the Supreme Court of the state. The court said: "Legislation is intended not only to meet the wants of the present, but to provide for the future. . . . At no distant day, Pittsburgh will probably become a city of the first class; . . ."⁵³ The legislature of Pennsylvania, along with those of other states, has seen to it that the situation does not work that way. As the population of Pittsburgh increased, the first-class standard was raised in 1889 to include cities having a population of over 600,000; and in 1895 the population minimum for this group was increased to 1,000,000 or over. Thus the legislature of the state has made certain that it will be a quite distant day before Pittsburgh becomes a city of the first class, the reasoning of the state Supreme Court to the contrary notwithstanding. Similar legislative reclassification on the basis of population growth has been practiced in other states.⁵⁴

The question has arisen in several cases as to the legality of classifying cities on the basis of population when a time limit is placed in the law. In such cases the legislature authorizes cities in a certain population group to perform certain acts before a fixed date. The effect is to exclude all cities which subsequently attain this

⁵¹ *Wheeler v. Philadelphia*, 77 Pa. St. 338 (1875). Also see *Trausch v. County of Cook*, 147 Ill. 534, 35 N.E. 477 (1893); *West Park Commissioners v. McMullen*, 134 Ill. 170, 25 N.E. 676 (1890).

⁵² *State v. Des Moines*, 96 Ia. 521, 65 N.W. 818 (1896); *Devine v. Commissioners of Cook Co.*, 84 Ill. 590 (1877).

⁵³ *Wheeler v. Philadelphia*, 77 Pa. St. 338 (1875).

⁵⁴ Harry Hubbard, "Special Legislation for Cities," 18 *Harvard Law Rev.* 588 (June, 1905).

required population. In general, such acts have been held to be special legislation. The Supreme Court of Kansas held an act which authorized cities to extend their boundaries to be unconstitutional as special legislation where there were three cities in the class, since it was necessary to begin action within 14 days and to carry it to completion within 58 days. The act was condemned because it operated in the present on an existing state of facts and not in the future.⁵⁵ Where the purpose of such an act is to give temporary relief, it has been held not to be improper as special legislation. The Supreme Court of Minnesota has thus held that a law authorizing the refunding of a due or past-due bond issue might carry a time limit.⁵⁶

Classification of cities on the basis of some geographical distinction has been generally condemned. The reasoning of the courts is that geographical conditions are permanent, and if the act is special in nature when passed, it must remain so in the future. There is no possibility of other cities qualifying under the act in the future, as in the case of classification on the basis of population. An act of the Pennsylvania legislature has been held void as special legislation; it provided that:

In all counties of this Commonwealth where there is a population of more than sixty thousand inhabitants, and in which there will be any city incorporated at the time of the passage of this act with a population exceeding eight thousand inhabitants, at a distance from the county seat of more than twenty-seven miles by the usually travelled public road, it shall be the duty of the president judge or of the additional law judge, or of either, to make an order providing for the holding of one week of court, after each regular term of court of said county, for the trial of civil or criminal cases in said city.

Only one city in the state could qualify under the act. It was pointed out by the court that as the act applied only to cities so located *at the time of the passage of the act*, no other counties could qualify in the future. "The moment we resort to geographical distinctions," said the court, "we enter the domain of special legislation, for the

⁵⁵ *Topeka v. Gillette*, 32 Kan. 431, 4 Pac. 800 (1884).

⁵⁶ For an excellent discussion of the judicial interpretation of a constitutional provision prohibiting special legislation, see William Anderson, "Special Legislation in Minnesota," 7 *Minn. Law Rev.* 133, 187 (Jan., Feb., 1923).

reason that such classification operates upon certain cities or counties to the perpetual exclusion of all others."⁵⁷

A study of the cases decided by the courts dealing with the classification of cities indicates that the test of the validity of a system of classification seems to be as much good faith as the wisdom of the particular plan. Classification under a constitutional prohibition on special legislation is not bad, per se; it is the abuse of the power of classification that is condemned by the courts.⁵⁸

Another method used to evade constitutional prohibitions on special legislation is the enactment of optional statutes. While by their terms they are made available to any city, they are in fact passed at the request of a particular city, and there is no thought of their being adopted by any other city. The courts are in disagreement as to whether such legislation is void under a constitutional prohibition on special legislation.⁵⁹

It should be pointed out, however, that optional legislation has also been used in some cases to work out a satisfactory relation between the cities and the state. Optional commission and council-manager laws have been enacted in several states and are applicable to cities which adopt them by popular vote. In Ohio three alternative plans were provided by a legislative act of 1913. These were the commission, the council-manager, and the mayor and council plans of government. Massachusetts by an act of 1915 provided four plans, any of which might be adopted by any city except Boston. Similar optional plans of municipal organization have been enacted in other states.⁶⁰

The requirement of general legislation for cities has been evaded in some cases by the establishment, in a city, of a special, independent municipal corporation to perform some function that is usually entrusted to cities. Though the constitution of Illinois prohibits the incorporation of "cities, towns, and villages" by local or special legislation, it has been held that this did not prevent the legislature from incorporating the Sanitary District of Chicago

⁵⁷ *Commonwealth v. Patton*, 88 Pa. St. 258 (1878).

⁵⁸ J. F. Dillon, *op. cit.*, vol. 1, sec. 47.

⁵⁹ *Ibid.*, vol. 1, chap. vi; H. L. McBain, *The Law and the Practice of Municipal Home Rule*, p. 99.

⁶⁰ *Illinois Constitutional Convention Bulletins*, 1920, p. 404.

by special act. This seems to open the door to another method of nullifying constitutional prohibitions on special legislation.⁶¹

The reason for placing constitutional limitations on special legislation for cities is laudable. Such limitations were intended to prevent favoritism and abuse of power on the part of state legislatures. However, the passage of a general uniform statute applicable to all the cities in a state is also unsatisfactory. As stated by Dillon, "The experience of the past thirty years leads to doubt how far a system of exclusively general legislation is adapted to municipal needs and the varying needs, requirements, and demands of different localities."⁶² An attempt has been made in some states to meet this situation and to provide a more flexible method of control, at the same time avoiding the evils of special legislation. Some of the methods which have been devised to secure the proper degree of flexibility in legislating for cities will now be considered.

One method which has been used is to provide in the constitution for the classification of cities. The adaptation of legislation to the problems of cities in a particular population group is secured and the danger of having special legislation in reality by the use of many population groups is avoided. It is a means of securing the advantage of population classification and of avoiding the disadvantages namely, possible legislative abuse of the device. The number of classes may be limited in the constitution—there are four in Colorado, Missouri, South Dakota, and Wyoming—or the number of classes and the population of each may be fixed in the constitution, as in New York and Kentucky.

A provision was placed in the New York constitution of 1894 which divided the cities of that state into three classes on the basis of population, and declared that laws "which relate to a single city, or to less than all the cities of a class shall be deemed special laws." A special law, after its adoption by the legislature, had to be submitted to the mayor in the case of first-class cities,⁶³ and to the mayor and council in the case of all other cities. If, after hearing, the municipal authorities rejected the bill, it became effective only

⁶¹ *Wilson v. Board of Trustees of Sanitary District*, 133 Ill. 443, 27 N.E. 203 (1890).

⁶² J. F. Dillon, *op. cit.*, vol. 1, sec. 61.

⁶³ New York, Rochester, and Buffalo.

after being passed again by the legislature.⁶⁴ A suspensory veto by cities on special legislation was thus provided.

The suspensory veto plan seems to have been effective in a negative way in New York. Only 143 special acts relating to cities were passed over the heads of the cities affected in the nineteen years following the adoption of the provision. While this was an average of only $7\frac{1}{2}$ acts per session, the number of such acts forced upon cities decreased in later years. Professor McBain has evaluated the New York provision as follows:

Considering the fact . . . that the New York scheme enables the Legislature not only to meet the diversified needs of cities but also to give some deference to what may doubtless be denominated the "individuality" of cities, there seems to be little question that the legal relation thus established between the city and the state is, in spite of its limitations, more satisfactory than that which in the letter of its requirement necessitates that the governments of many cities shall spring from a single mold of general law.⁶⁵

As has been pointed out above, most of the special acts which were unsatisfactory to the cities were killed by the suspensory veto. That the system was not satisfactory enough, however, is shown by the fact that the municipal officials of the state continued to fight for and finally received a constitutional grant of home rule in 1923.

A constitutional amendment was adopted in Illinois in 1904 which permits the legislature to enact special laws applicable to the city of Chicago, subject to the approval of the voters of that city. A similar provision applicable to all cities in the state was written into the Michigan constitution of 1908. It provides that "no local or special act shall take effect until approved by a majority of the electors voting thereon in the districts to be affected." Little use has been made of these provisions in either Illinois or Michigan.⁶⁶

Special legislation is permitted in some states, but limitations as

⁶⁴ Amended by the home-rule provision of 1923.

⁶⁵ H. L. McBain, *The Law and the Practice of Municipal Home Rule*, p. 105, by permission of the Columbia University Press. Also see G. L. Schramm, "Special Legislation for New York Cities, 1914-1921," 16 *Am. Pol. Sci. Rev.*, 103 (Feb., 1922); *Illinois Constitutional Convention Bulletins*, 1920, p. 403; A. W. Macmahon, *The Statutory Sources of New York City Government*.

⁶⁶ With the adoption of home rule in Michigan, the need for special legislation became less.

to the procedure in its passage are imposed. The aim of these provisions, such as the requiring of public notice before the passage of special acts, is to secure the advantages but to prevent the abuses possible in the use of this power.⁶⁷

It may be seen from the above discussion that the securing of a satisfactory relation between cities and the state has been one of our most perplexing problems. The systems of special, general, optional, classified, and special legislation subject to local veto have all been tried as means of developing a satisfactory and workable relationship between the state and its cities. In actual practice all have been found to have weaknesses. The latest development in the field of city-state relations is municipal home rule. This subject is of sufficient importance to warrant a separate chapter for its consideration.

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Home-Rule and Other Charters

The granting of the power of home rule is another effort that has been made to work out a satisfactory relationship between cities and the state. Home rule for cities means, in a broad sense, the right of self-government. In actual practice, however, it means the power given to cities to make and change their own charters and to govern themselves in accordance therewith.

LEGISLATIVE HOME RULE

Home rule, or the power of local self-government, may be given to cities by legislative act. The legislature may, by statute, abdicate its power to interfere in municipal affairs and grant to the cities power to govern themselves. One difficulty, however, is that legislatures have been unwilling to follow this procedure. They have preferred to reserve to themselves the power to make detailed regulations relative to the government of cities. Even though home rule is granted by legislative act, there is no assurance that a subsequent act of the legislature may not take this power away.

A general grant of power to cities by legislative act (i.e., legislative home rule) would have some practical advantages over detailed regulation by legislative act. It is generally accepted that it is easier to defeat or kill a bill in a state legislature than to pass one. If cities could secure a general grant of power, the task of preventing encroachment at subsequent sessions of the legislature would be easier than, under the usual plan of legislative control, to seek the enactment of a bill to confer needed power for each new problem as it arises. Despite the fact that under legislative home rule the legislature may at any time take back what it has given,

the probability of such interference is less where a general grant of power is conferred upon cities. When such attempts are made, the cities in the state, acting through municipal leagues, have an easier task—the defeat of the legislation. Especially would this be true in those states where on final passage a bill must receive a majority vote of the total membership before it becomes a law. Mere silence or failure to vote would in such a state be effective in preventing legislative encroachment. Legislative representatives or lobbyists find that this is often much easier to secure than a positive vote. And under the usual plan of legislative control over cities, a positive favorable vote must be secured from the legislature when added power is sought by cities. Herein would appear to lie an intangible advantage of legislative home rule. The insecurity of the grant of power remains a serious problem, however, and is a weakness which should not be minimized.

The earliest case of a general grant of legislative home rule to cities occurred in Iowa in 1858. This act provided for the amendment of existing city or town special charters on petition of one-fourth of the voters, or submission by the local legislative body, and approval by a referendum of the voters. Similar acts granting legislative home rule to cities were enacted in Louisiana in 1896, South Carolina in 1899, Mississippi in 1900, and Florida and Connecticut in 1915. The principle of legislative home rule is embodied in the statutes of Nevada, but the legislature has not acted in conformity with the spirit of the grant. The statutes provide that "the right of home rule and self-government is hereby granted to the people of any city or town." The legislature, however, has provided by statute the details of council procedure, what constitutes a quorum, the style of ordinances, and the requirement as to keeping a journal. The statutes enumerate the things cities may do, including power "to provide for and regulate the numbering of houses and lots," "to prohibit cruelty to animals," and "to erect and maintain all needful buildings for the use of the city." This is not the approach to local government found in a state having genuine "home rule and self-government." In Nevada, the charter-making power has been conferred upon commission-governed cities.

As has been stated above, the chief weakness of this method of

granting home rule is the possibility of the repeal of the act by the legislature at any time; or the legislature might override a locally adopted charter provision by subsequent legislative act. The legal competence of the legislature to grant home rule to cities has also been questioned. Legislative acts which were passed in Michigan (1899) and in Wisconsin (1911) were held invalid by the courts of those states as an unconstitutional delegation of legislative powers.¹ The Supreme Court of Wisconsin, in considering this question, held that "legislative delegation of authority to make a city charter, or any part of it, . . . would be a delegation of legislative power and so void." A New York act of 1913 which granted an extended list of powers to cities was never put into effect because of doubt as to the legal competence of the legislature to grant so much power of local legislation to cities.²

CONSTITUTIONAL HOME RULE

It seems obvious that home rule by legislative act is not a satisfactory method of meeting the problem of the relationship between cities and the state. The type of home rule that has proved more satisfactory is that granted by constitutional provision. And as the term home rule is popularly used today, it refers to the power of self-government conferred upon cities by constitutional provision. The Supreme Court of the United States has pointed out that a home-rule city "occupies a unique position. It does not, like most cities, derive its powers by grant from the legislature, but it frames its own charter under express authority from the people of the State, given in the constitution."³ When such power is conferred upon cities by constitutional provision it may be defended in the courts against legislative encroachment.

Constitutional home rule is, in a sense, the application of the

¹ *Elliot v. City of Detroit*, 121 Mich. 611, 84 N.W. 820 (1889); *State v. Thompson*, 149 Wis. 488, 137 N.W. 21 (1912).

² *Illinois Constitutional Convention Bulletins*, pp. 406-407. For cases in Iowa and Mississippi upholding legislative home rule, see *Ex parte Pritz*, 9 Ia. 30 (1859); *Voss Phil v. Harmer*, 29 Ia. 222 (1870); *O'Flinn v. McInnis*, 80 Miss. 125, 31 So. 584 (1902); *Yazoo City v. Lightcap*, 82 Miss. 148, 33 So. 949 (1903); *Adams v. Kuykendall*, 83 Miss. 571, 35 So. 830 (1904).

³ *Withnell v. Ruecking Construction Co.*, 249 U.S. 63, 63 Law. Ed. 479 (1919).

federal principle of government to the relations between the city and the state. As governmental powers are divided in the federal Constitution between the central government and the states, in a state having constitutional home rule the powers reserved to the state are divided between the state and the cities by state constitutional provision, rather than left to the will of the legislature. Under our federal system of government the states are guaranteed freedom from interference by the national government within the sphere of action which has been reserved to them.⁴ A reallocation of governmental powers may be made between the states and the national government only by constitutional amendment. In a constitutional home-rule state, governmental powers are divided between the state and the cities by constitutional provision, and the cities are free from legislative domination and encroachment. Only by constitutional amendment may the central state government invade the field of powers which has been reserved to the cities by the constitutional grant of home rule. This insures the cities a far greater degree of security and freedom from state interference than they enjoy in a non-home-rule state.

The principle of constitutional home rule for cities may be illustrated by the following diagrams:

Federal Principle as Applied to the Relations Between
States and the National Government

Constitutional Division of Powers

| | |
|------------------------|--------------------|
| National Government | States |
| Delegated Powers | Reserved Powers |

A reallocation or redivision of governmental powers only by constitutional amendment, which requires a two-thirds vote of Congress and ratification by three-fourths of the states.

⁴Some states have objected, however, to what may be considered indirect encroachments, as by federal subsidies.

Federal Principle as Applied to the Relations Between
the State and the Cities in a State Having
Constitutional Home Rule

Constitutional Home-Rule State

| State's Powers | Cities' Powers |
|--|--|
| State Matters or Questions of General Concern | Municipal Matters or Questions of Local Concern |

Reallocation or redivision only by amendment of the state constitution; the requirement for constitutional amendment varies but is in no case in the hands of a temporary legislative majority.

One writer has suggested that it is even more reasonable to apply this principle to the relations between cities and the state government than to those between the states and the national government.⁵ Whereas state lines are largely historical accidents, establishing more or less arbitrary territorial units, cities are natural economic and sociological units. The congestion of people in a definite area results in special governmental problems; thus the city is a natural or logical unit for the performance of governmental functions, rather than an artificial unit as in the case of states.

Two types of powers are granted to cities in a state having constitutional home rule. First there is the grant of substantive power, or the reserving of certain fields of governmental authority within which the city may act. Home rule implies in the popular mind, and in most cases will mean, an increase in the substantive powers of cities. In the second place, home rule means the grant to the city of the procedural power to exercise the powers granted in the manner it sees fit. Too frequently in non-home-rule states the legislature has not only limited the things the city may do but also has specified the method to be used in carrying out these powers.

⁵ H. L. McBain, *The Law and the Practice of Municipal Home Rule*, chap. iv.

State law fixes the size of the council, the term of the mayor and council, the vote required in the passage of ordinances, and the method and time of publication before ordinances become effective. Since the states have great freedom as to the manner in which they shall exercise their reserved powers, such as determining the size of the legislature, the term of office of the governor, the method of selecting employees, etc., constitutional home rule extends to cities this same freedom of action relative to the manner in which they shall exercise the powers conferred.⁶

The sphere of municipal activity in states having constitutional home rule has been defined in various ways. The grant of powers is usually made in general terms, as control over "local affairs and government" in Wisconsin, "local and municipal matters" in Colorado, "municipal affairs" in West Virginia, or a grant of the "powers of local self-government" as in Ohio. The power to enact general laws on matters of state concern and interest is reserved to the states, and municipal charters or ordinances may not conflict with such laws.⁷

The question often arises as to whether a certain function or power is of local or municipal concern, or of general state interest.⁸ Much litigation involving this point has arisen in home-rule states. It has been necessary to answer this question in these states by a slow process of judicial inclusion and exclusion. This has meant a period of uncertainty and the multiplication of legal questions in the municipal field. The only method by which to determine the respective powers of city and state in a home-rule state which delimits the scope of municipal powers in general terms is by carrying a case to the highest court of the state. Some cases which illustrate this difficulty will now be considered.

The constitution of California grants to cities control over "munic-

⁶ *Ibid.*

⁷ For an excellent discussion of this question, see E. McQuillin, *The Law of Municipal Corporations*, vol. 1, secs. 194-197.

⁸ J. F. Dillon, *op. cit.*, vol. 1, sec. 63; W. C. Jones, "Municipal Affairs," 1 *Calif. Law Rev.* 132 (Jan., 1913); V. Lynagh, "Wisconsin 'Unshackles' Her Cities," 18 *Nat. Mun. Rev.* 737 (Dec., 1929); J. D. McGoldrick, "Home Rule in New York State," 19 *Am. Pol. Sci. Rev.* 693 (Nov., 1925); William Anderson, "Municipal Home Rule in Minnesota," 7 *Minn. Law Rev.* 306 (Mar., 1923); William Anderson, "Minnesota: a Reappraisal," 21 *Nat. Mun. Rev.* 94 (Feb., 1932).

ipal affairs." Acting under this grant of power, a city fixed the speed limit at fifteen miles per hour. The state legislature took the view that this was a matter of state concern, fixed the limit at twenty miles, and specifically forbade cities to place the maximum at less. If this is a matter of municipal concern, the state law was unconstitutional. If it is a general matter, the municipal regulation was void. In considering the question, the Supreme Court of California stated that "while it is true that the regulation of traffic upon a public street is of special interest to the people of a municipality, it does not follow that such regulation is a municipal affair." After discussing the nature of streets and the problem of regulating traffic thereon, the court arrived at the conclusion that "the regulation of traffic upon the streets of a city is not one of those municipal affairs in which by the Constitution chartered cities are given a power superior to that of the state Legislature, but is subject to the general laws of the state, and if inconsistent therewith are invalid."⁹

The same question has arisen in connection with other services. In a state having constitutional home rule, may cities fix the rates of public utilities? It is fairly well settled that in a home-rule state the power granted to cities does not include that of making rates for public service companies. This is held to be not of municipal or local character but general in nature and subject to the control of the state public utilities commission.¹⁰

Education and health administration are other functions upon which there has been conflict between the state and cities as to whether they are matters of state or municipal concern. Does the grant of home rule give the city complete control over its educa-

⁹ *Ex parte Daniels*, 183 Cal. 636, 192 Pac. 442 (1920). See also *In re Murphy*, 190 Cal. 286, 212 Pac. 30 (1923); *Whyte v. Sacramento*, 65 Cal. App. 534, 224 Pac. 1008 (1924). On the conflict of state and municipal speed regulations in the home-rule State of Oregon, see *Kalich v. Knapp*, 73 Ore. 558, 142 Pac. 594 (1914); *ibid.*, on rehearing, 145 Pac. 22 (1914); *Everart v. Fisher*, 75 Ore. 316, 145 Pac. 33 (1914); *ibid.*, on rehearing, 147 Pac. 189 (1915).

¹⁰ *State v. Missouri and Kansas Telephone Co.*, 189 Mo. 83, 88 S.W. 41 (1905); *City of San Leandro v. Railroad Commission*, 183 Cal. 229, 191 Pac. 1 (1920); R. W. Montague, "Law of Municipal Home Rule in Oregon," 8 *Calif. Law Rev.* 151 (Mar., 1920); J. D. McGoldrick, *Law and Practice of Municipal Home Rule, 1916-1930*, pp. 326-328.

tional system and over municipal health administration, or are these functions still subject to state control? The courts have taken the view that these are matters of state concern and not local or municipal affairs.¹¹

Practically every type of municipal activity has been before the courts for litigation to determine whether it was a matter of local or municipal concern. The question has arisen whether the grant of home rule included power to regulate matters pertaining to taxation, eminent domain, police, police courts, annexation and separation of territory, streets, ownership of public utilities, and municipal elections.¹² Unfortunately, the decision of the courts of one state as to the nature of a particular function does not settle the question for other states. The wording of constitutional home-rule provisions differs, and even on similar provisions the courts have reached different conclusions as to whether they were matters of municipal or state concern.¹³ As stated by the Supreme Court of Nebraska, "There is no sure test which will enable us to distinguish between matters of strictly municipal concern and those of state concern. The court must consider each case as it arises and draw the line of demarcation."¹⁴ The problem resolves itself into a question of judgment or opinion. What the decision of the court will be in a particular case is largely a matter of conjecture.

It may be seen that in a constitutional home-rule state much depends upon the courts in determining the scope of power granted

¹¹ *Hancock v. Board of Education*, 140 Cal. 554, 74 Pac. 44 (1903); *Vallejo High School Dist. v. White*, 43 Cal. App. 359, 185 Pac. 302 (1919); *Los Angeles City School Dist. v. Londgen*, 148 Cal. 380, 83 Pac. 246 (1905); *State v. Mayor, etc., of Milwaukee*, 189 Wis. 84, 206 N.W. 210 (1925); *Carlberg v. Metcalf*, 120 Neb. 481, 234 N.W. 87 (1930); *Board of Health of City of Canton v. O'Wesney*, 40 Ohio App. 77, 178 N.E. 215 (1931); 3 *Wis. Law Rev.* 423, 427 (Apr., 1926); 15 *Calif. Law Rev.* 60 (Nov., 1926); 18 *Nat. Mun. Rev.* 640 (Oct., 1929); 21 *ibid.* 121 (Feb., 1932); J. D. McGoldrick, *Law and Practice of Municipal Home Rule, 1916-1930*, pp. 320-323.

¹² H. L. McBain, *op. cit.*, p. 671; note in 15 *Calif. Law Rev.* 60 (Nov., 1926); J. D. McGoldrick, *Law and Practice of Municipal Home Rule, 1916-1930*, chap. xiv.

¹³ Compare, for example, cases decided in home-rule states on the question as to whether cities may require notice of claims against them to be filed as a condition precedent to a right of action. *City of Tulsa v. Adams*, 151 Okla. 165, 3 Pac. (2nd) 155 (1931); *Green v. Amarillo*, 244 S.W. 241 (1922); *Thomann v. Rochester*, 256 N.Y. 165, 176 N.E. 129 (1931).

¹⁴ *Carlberg v. Metcalf*, 120 Neb. 481, 234 N.W. 87 (1930).

to the cities.¹⁵ The attitude of the legislature, however, is as important as that of the courts. The initiative in the encroachment upon municipal powers must be taken by the legislature; in the absence of such attempts to invade the municipal field, no judicial question will arise. A strong organization of cities lobbying before the legislature can be an important factor in protecting the home-rule rights of cities. They may effectively oppose legislative acts which are contrary to the home-rule principle and thus prevent encroachment upon their powers.¹⁶

The suggestion has been made that the situation would be remedied in part by making the grant of powers in other than general terms. Professor McBain has pointed out that vagueness and generality in constitutional provisions on home rule may have been excusable in the beginning.¹⁷ But the court decisions which have been made on this question are numerous enough so that we may know with a fair degree of certainty which questions will arise and what attitude the courts will take in the case. The question of which powers of self-government should be granted to cities is more a question of policy than of law. On those questions where litigation is quite likely to arise, the constitution may clearly state that such questions are to be considered matters of state or of municipal concern, as the case may be. This is the plan proposed in the Model State Constitution. This principle was also applied in the constitutional provision adopted in New York in 1923 granting home rule to the cities of that state.¹⁸ Another approach to the problem is not only to make a positive grant of power to cities, but

¹⁵ See notes by Charles W. Tooke in 18 *Nat. Mun. Rev.* 773 (Dec., 1929); 19 *ibid.* 52 (Jan., 1930); 20 *ibid.* 229 (Apr., 1931); 21 *ibid.* 249 (Apr., 1932). Also see 7 *New York Univ. Law Rev.* 752 (Mar., 1930); 39 *Yale Law Rev.* 92 (Nov., 1929); 24 *Ill. Law Rev.* 596 (Jan., 1930); 9 *Nebraska Law Bulletin* 474 (May, 1931); 11 *Calif. Law Rev.* 446 (Sept., 1923).

¹⁶ William Anderson, "Minnesota: a Reappraisal"; A. W. Bromage, "What Home Rule Means in Michigan," 21 *Nat. Mun. Rev.* 176 (Mar., 1932).

¹⁷ H. L. McBain, *op. cit.*, p. 672.

¹⁸ *Constitution of New York*, Art. XII. By an amendment adopted in 1938, cities were given the further power to enact "local laws not inconsistent with the constitution and laws of the state relating to its property, affairs or government." This is in addition to the enumerated list of subjects on which, under the amendment of 1923, cities may adopt local laws "not inconsistent with this constitution and the laws of the state," regardless of whether they relate to the property, affairs, or government of the city.

also to limit expressly the power of the state legislature to encroach upon the powers so granted. In the Missouri constitution of 1945 an effort was made to restrict legislative interference with the home-rule powers of cities by the following provision: "No law shall be enacted creating or fixing the powers, duties, or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous constitution, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents." This principle could be extended to other questions on which there has been a tendency for the legislature to interfere. By constitutional provision the sphere of municipal power should be not only defined but protected against future legislative encroachment.

Constitutional home rule is granted in general terms to all cities, or to all cities above a certain population. Joseph D. McGoldrick has raised the question whether all cities should receive an equal degree of freedom regardless of their size. "It may well be," he states, "that small cities can be wisely permitted a much higher degree of municipal autonomy than their metropolitan sisters, or the very reverse may be true. But it is hardly likely that a city of seventeen hundred should stand in exactly the same relationship to the state as a city of seven millions."¹⁹

This problem may be illustrated by the regulation of traffic. In the regulation of traffic on a city street, is the primary interest state or municipal? The answer might well be that it depends upon the street—whether it is a local street, or an arterial highway passing through the city. A strong case can be made for holding the regulation of traffic on an arterial highway in the smaller cities to be a matter of state concern; but the situation changes in a large city, such as New York or Chicago. In such cities, even on arterial highways, the local interest would seem to be paramount. Most of the traffic even on such streets in a large city would be local; in the small city most of it would be not local but rather intercity. Thus whether a function is of state or local concern will in some cases depend upon the size of the city.

There has been a tendency on the part of courts to divide functions into large categories and assign them to state or municipal

¹⁹ J. D. McGoldrick, *Law and Practice of Municipal Home Rule*, p. 318.

governments through the interpretation of constitutional grants to cities of control over "municipal affairs" or "matters of local concern." In many cases this appears in practice to be of doubtful wisdom. The amount of debt a city may incur may be of state concern, and the purposes for which debts may be incurred primarily of local interest. An attempt to classify municipal finance generally, or even debt administration, as a matter of state or local concern may be unwise. In many cases it will depend rather upon the aspect or phase of the subject under consideration. The same may be true of traffic regulation. The regulation of speed, the routing of traffic through the city, and the erection of traffic signs and signals are all phases of traffic regulation. But it does not follow that control over all must be allotted to either the state or the local government. There may be a division. The courts, however, have not given adequate consideration to this problem.

In a state having constitutional home rule, it is obvious that the fate of the cities is largely in the hands of the courts. While the courts have not been accused of the partisan motives which have often actuated legislators in their treatment of cities, some writers have expressed doubts as to whether judges are better qualified than legislators, or the judicial process more satisfactory than the legislative, for working out the relationship of cities to the state. Thus McGoldrick takes the view that neither the training of lawyers and judges, nor the legal approach, with its emphasis on precedents, is suited to the determination of whether a question is of state or municipal concern.

STATES PROVIDING FOR MUNICIPAL HOME RULE

Missouri was the first state to grant constitutional home rule to cities (1875). Though the provision limited it at that time to cities of more than 100,000 inhabitants, it is significant and important as the first step in securing home rule to cities by constitutional provision. Other states followed Missouri's lead—California, 1879; Washington, 1889; and Minnesota, 1896. Thus, up to the beginning of the present century only four states had provided constitutional home rule for cities. Since that time 12 other states have adopted constitutional provisions granting home rule to cities: Colorado,

1902; Oregon, 1906; Oklahoma and Michigan, 1908; Arizona, Texas, Nebraska, and Ohio, 1912; New York, 1923; Wisconsin, 1924; Utah, 1932; and West Virginia 1936. These 16 states have a combined population of over 50,000,000; thus approximately 40 per cent of the American people now live in home-rule states. In addition to these states, Maryland has county home rule which extends to Baltimore, that city being treated as a county. By constitutional amendment in 1922, Pennsylvania empowered the legislature to grant home rule to cities, but thus far no action has been taken by the legislature. Idaho by constitutional provision empowers any city to "make and enforce within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with general laws." The grant is one of local legislation but not of the power for cities to frame their own charters.

While home rule is granted to all cities in Oregon, Michigan, and Ohio, the power to adopt their own charters is usually limited to cities above a certain population. It is limited to cities above 2000 in Colorado, Oklahoma, and West Virginia; 3500 in Arizona and California; 5000 in Texas; 10,000 in Missouri; and 20,000 in Washington. Missouri originally granted home rule only to cities of over 100,000, but in the new constitution of 1945 it was extended to all cities of more than 10,000 population. This increased the number of eligible cities from two to 22. As was pointed out above, municipal home rule in Maryland is limited to the city of Baltimore.

Provision must be made for governing cities having less than this population. Likewise, even though home rule is extended to all cities, some provision must be made for those which do not see fit to adopt their own charters. This may be done by any of the methods discussed in the preceding chapters, namely, special charters, general acts, optional laws, or classification on the basis of population and the enactment of a law applicable to each population group.

EXTENT OF USE OF HOME RULE BY CITIES

The question arises as to what extent cities have taken advantage of home rule after it has been granted to them. Among the states making the greatest use of their home-rule provisions are California,

Michigan, Ohio, Texas, Minnesota, Oklahoma, and Oregon.²⁰ Experience in these states indicates that it is the larger cities that make more use of a grant of home rule. In some states, however, the "passion for local independence" does not appear to be strong, little use having been made of home rule. This has been attributed to a "lack of municipal consciousness" or the absence of "home-rule awareness," rather than to dissatisfaction with home rule because of any unfavorable attitude of the courts in interpreting the power granted, or to any fundamental weakness of constitutional home rule.

PROCEDURE IN ADOPTING A MUNICIPAL HOME-RULE CHARTER

In the division of powers in the Constitution between the national government and the states, no procedure whatever is outlined for the method by which the states shall exercise their reserved powers. The states may use whatever means they see fit in adopting and amending their constitutions. A different principle has been followed in the states that have adopted constitutional home rule. The procedure by which home-rule powers are to be exercised is usually outlined in the state constitution; but in some states, such as Michigan, Wisconsin, Texas, and Oregon, this has been left to statute.

The plan of outlining the procedure to be followed in the exercise of home-rule powers seems to be preferable. Since city charters have the effect of law, it would seem that some uniform procedure should be followed for the transition from legislative to local control. As Professor McBain has pointed out, if there were no state law on the subject, the people of the city would be compelled to act in an irregular manner until a charter has been adopted outlining the procedural method for the future.²¹

The first step in the framing and adoption of a municipal home-rule charter is the selection of a charter commission or board of freeholders, corresponding in its duties to a state constitutional con-

²⁰ On the extent to which cities have used home rule in selected states, see 21 *Nat. Mun. Rev.* 12, 94, 176, 229, 357, 434, 564 (1932); 35 *ibid.* 124 (Mar., 1946).

²¹ H. L. McBain, *op. cit.*, p. 658.

vention.²² Charter commissions vary in size from 11 to 21 members; they are usually elected at large, but in Michigan and Oklahoma they are elected by wards. In New York the number of members and the method of selection are left to the determination of the city council. In Minnesota the members of the commission are appointed by the district judges. Where the members are popularly elected, the election may be called by the city council upon its own initiative or upon a petition signed by a required percentage of the electorate.²³

A time is usually fixed for the completion of the work of the charter commission. After the required publication, the charter is submitted to the electorate for approval. While a simple majority of those voting is sufficient in most states for the adoption of a charter, Minnesota and Missouri require approval by four-sevenths and three-fifths, respectively, of those voting.

Some states provide that municipal home-rule charters must be submitted to state authorities before they go into effect. This approval or rejection is made by the state legislature in California, and in Arizona and Oklahoma by the governor, who may disapprove only in case he finds the charter in conflict with the constitution or laws of the state. In Michigan charters are submitted to the governor before approval by the electorate. If the governor fails to approve the charter, it may be submitted to popular vote only by a two-thirds vote of the charter commission.²⁴

Once the charter has been adopted and put into effect, some provision must be made for its amendment. Experience may demonstrate that while the charter as a whole is satisfactory, one or two provisions need to be changed. In most states amendments to the charter may be submitted either by the city council or by popular petition, but some states provide for only one of these methods.

²² No provision is made for a charter commission in Oregon. Proposed charters are presented by initiative petition or by the city council. These two methods, in addition to the charter commission plan, may be used in Wisconsin.

²³ *Illinois Constitutional Convention Bulletins*, 1920, p. 409. It should be pointed out that local charter conventions, such as those in New York City in 1829 and Chicago in 1905, have sometimes been held in non-home-rule states. To become effective, however, the work of such conventions must receive legislative sanction.

²⁴ E. McQuillin, *op. cit.*, vol. 1. sec. 152.

ADVANTAGES AND DISADVANTAGES OF MUNICIPAL HOME RULE

Many advocates of municipal home rule speak of the right of cities to govern themselves. It does not seem to be a question of the right of the state to govern cities, nor is it a question of the right of cities to govern themselves. The question is whether constitutional home rule provides a more satisfactory relationship between the cities and the state. In determining what constitutes a satisfactory relationship, the welfare of both the state and the cities must be considered.²⁵ It is difficult to justify home rule if it leads to improvement in municipal conditions at the expense of the welfare of the state. Advocates of home rule believe—and, it seems, justifiably so—that it will be of advantage to the cities and also to the welfare of the state as a whole.

What objections are made to municipal home rule? There are those who point to cases of corruption and municipal extravagance. They believe that home rule will give greater opportunities to political machines and special interests, and that they will take advantage of the opportunities offered for plundering the city. Home rule, they say, will become “home ruin.”²⁶ In some cases party leaders will unquestionably use home rule for degrading and partisan ends.²⁷ Opponents of home rule feel that the result will be greater corruption and the complete breakdown of local government. This objection resolves itself into a distrust of the ability of the people of the city to govern themselves. Unfortunately, a review of the municipal history of the United States furnishes all too many illustrations to support this point of view.

Advocates of home rule believe that the added powers and responsibilities given the cities will lead to the development of an enlightened and watchful electorate.²⁸ Rather than a disadvantage,

²⁵ Cf. D. B. Eaton, *The Government of Municipalities*, pp. 28-29.

²⁶ 19 *Nat. Mun. Rev.* 120 (Feb., 1930). For the weaknesses of home rule, see *Report No. 1 of the New Jersey Commission to Investigate County and Municipal Taxation and Expenditures*, 1931, p. 202; *An Improved Procedure for Investigating Municipal Affairs*, published by the City Club of New York (Jan., 1932).

²⁷ D. B. Eaton, *op. cit.*, p. 30.

²⁸ See W. T. Arndt, *The Emancipation of the American City*, pp. 14-15.

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its advocates see a positive advantage in placing this added burden and responsibility on the municipal electorate. In advocating municipal home rule, Professor Goodnow stated as early as 1895 that the granting of a greater degree of local autonomy would "cause all municipal citizens to feel a healthy sense of responsibility for the evils from which they suffer, as well as an assured conviction that they have it in their power to work a sensible improvement in their condition."²⁹ James Bryce in his *American Commonwealth* also took the view that granting powers of local self-government tended to secure good administration of local affairs by giving the people a means of overseeing the conduct of their own local affairs.³⁰ One enthusiastic supporter has ventured the prediction that home rule would "result in the development of a spirit of intelligent freedom, not unlike that developed among the early Greeks in their love of a free city."³¹

Another weakness of municipal home rule, as has been pointed out before, is the difficulty of dividing powers between state and city. The scope of the power granted under a general constitutional grant of authority to control "municipal affairs" and matters of "municipal concern" or to exercise "powers of local self-government" is uncertain until defined by the courts. This leads to costly litigation and delay. To attempt a detailed enumeration of matters that should be left to cities would not be a satisfactory method of meeting this problem. Matters of local interest may, and do, become general; and under such a plan a constitutional amendment would be necessary. The same problem would arise where it was desirable to transfer a power from state to municipal control. Where defined in general terms, this may be handled by judicial interpretation, thus securing a greater degree of flexibility.

This leads to the question whether the scope of municipal affairs is not becoming narrower. Things which a decade ago were of municipal concern have become of general state interest because of changed economic conditions. The method used to dispose of wastes may be of municipal concern where the state is not highly urbanized; when the state reaches the point where 80 per cent

²⁹ F. J. Goodnow, *Municipal Home Rule*, p. 9.

³⁰ James Bryce, *American Commonwealth*, 1914 ed., vol. i, pp. 351-352.

³¹ C. P. Hall, "Constitutional and Legislative Limitations of the Home Rule Charter in Minnesota." 5 *Mich. Law Rev.* 6 (Nov., 1905).

of its people live in cities, this may become a matter of general concern. A grant of power to cities will thus be unsuited to the changed conditions. This might be considered a weakness of municipal home rule.

This changing scope of state and municipal affairs has been expressed by the Supreme Court of California as follows:

Until the advent of the automobile, interurban traffic was so small as to be negligible, and, as a result, traffic regulations were a matter of concern only to the inhabitants of the city. But when autos and motor-trucks invaded our highways and streets in tens and hundreds of thousands, a matter that yesterday was local has become of state and nationwide importance today. . . . The term "municipal affairs" is not a fixed quantity, but fluctuates with every change in the conditions upon which it is to operate.³²

Another objection that is made to home rule is that it will constitute each city an *imperium in imperio*, thus losing sight of the fact that the city is an agent of the state as well as an organization for the satisfaction of local needs. This can be answered by saying that while the other methods of regulating city-state relations discussed in the preceding chapter emphasize the "agent of the state" aspects of the city, home rule more nearly squares with the actual facts and treats the city as being primarily an organization for the satisfaction of local needs.³³

Advocates of home rule do not propose to set up an independent government within the state. Cities are to be permitted to make their own decisions and to carry out these decisions through instrumentalities and agencies of their own choosing only insofar as purely local affairs are concerned. In matters which concern the entire state, the city is not to be free from state control or permitted to do as it pleases. The argument that home rule sets up an *imperium in imperio* and that cities will no longer be effective agents of the state is founded on a misunderstanding of constitutional home rule.³⁴ The attitude of advocates of home rule on this question has been stated as follows:

³² *In re Murphy*, 190 Cal. 286, 212 Pac. 30 (1923).

³³ R. M. Story, "Municipal Home Rule," *Proceedings of First Annual Convention of Illinois Municipal League*, 1914, p. 15.

³⁴ A. R. Hatton, "Free Cities in a Free State," 7 *Ill. Mun. Rev.* 84 (Apr., 1928).

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Home rule for cities is based upon the fundamental proposition that the local community, in purely local matters, is best able to determine its own needs, and to devise ways and means whereby those needs shall be met; on the other hand, home rule recognizes that in matters which affect the general welfare of the state the legislature should be supreme. It is not the purpose of municipal home rule movements to impair the legitimate and effective use of the city as a state agent in matters which affect the commonwealth as a whole. . . .³⁵

Home rule offers the most satisfactory relationship between city and state. It is a logical outcome of the prohibition on special legislation. The attempt to legislate for all cities by a general law was unsatisfactory. Many abuses developed in the classification of cities to conform to constitutional prohibitions on special legislation and yet avoid treating by a general law all cities of the state in the same manner. In a discussion of home rule we should not lose sight of our all too often unhappy experiences under other methods of city-state relationship.

THE CITY CHARTER

A charter serves the city in the same way that a constitution does a state; it is, in fact, the constitution or fundamental law of the city. It is necessary to consult the charter of the city to answer questions as to the powers of the municipality, or of particular officers or departments of the city. The source of power and the method of providing city charters differ from those found in state constitutions. The people are the source of power in state constitutions, subject only to the limitations found in the Constitution of the United States. Except in home-rule states, the people of the city are not the source of power for the city charter; rather it is the state legislature. In a home-rule state, both the procedure and the source of power are more analogous to those found in a state constitution. The charter commission is subject to the grant of power provided in the state constitution; but, in the same manner, the state constitutional convention is limited to the powers reserved to the states in the federal Constitution. As pointed out earlier in this chapter,

³⁵ R. M. Story, *op. cit.* Also see Charles A. Beard, *American City Government*, chap. ii.

procedural limitations are often provided for city charter commissions, either in the constitution or in the state law, covering such matters as the size of the charter commission and the time of reporting. Such limitations are not placed on state constitutional conventions, either by federal constitutional provision or by law.

WHAT THE CHARTER PROVIDES

Just as state constitutions vary in their provisions and arrangement, so do city charters. Provision is made in the charter for the territorial boundaries of the city. There may be a definite statement of the boundaries, as in the case of some special or home-rule charters, or merely a statement as to how they are to be determined. In the latter case, the actual determination may be left to the council or to a vote of the people. Where the city is incorporated under general law, it may be necessary to look at the judicial decree creating the city to find a statement of the boundaries. The charter will also contain a provision for a change in boundaries.

The charter of the city provides the form and framework of the government, whether it shall be mayor and council, commission, or council-manager. In the case of elective officers, the method of election and term of office are provided. The practice varies as to departmental organization; in some charters this is provided for, the departments being enumerated, and the method of selection and the powers of the department heads being covered. In other charters this is left to the council to be met by ordinance.

Disputes as to powers of the city as such, or of particular municipal officers, are settled by the charter. In some cases, powers are conferred by the charter upon specified officers and in other cases upon the city. If the city as such is given the power, rather than a specified officer, the power is held to reside in the council. The council may, if it does not violate the principle of non-delegation of legislative power, confer the power upon other officers or employees.

A section of the charter is generally devoted to finances—the raising and expenditure of public funds. Provision will be made for raising funds by general property taxes, special taxes, and license fees, the making of the budget, hearings thereon, and final adop-

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tion. Municipal debt will also be covered in the charter; if there is a constitutional limit on the total amount of the debt, the charter will state the procedure for incurring debt within that limit.

During the twentieth century a new type of provision has been found in city charters. With the extensive use now being made of the initiative, referendum, and recall, a separate section is usually devoted to popular control.

TYPES OF CITY CHARTERS

Who makes city charters and where may copies of them be found? Thus who made the charter of your city, who has the power to amend or change it, and finally where can a copy be found? The answer depends upon the state and the city in which you live.

In some states the practice of granting special charters to cities is still followed; this was the common practice in the early history of the country but, as pointed out in an earlier chapter, in the last part of the nineteenth century special legislation for cities was prohibited in most states by constitutional provision. Special charters are, however, still granted to cities in ten states. In these states most cities are governed by such charters, which means that the legislature has passed a special act applying only to one city. This act refers to the city by name, provides the form of government, and states the powers to be exercised by the city as such, and also by the various branches and officers of the government. For such a charter one would look at the session laws for the year in which the city was incorporated; amendments to the charter may have been made at subsequent legislative sessions. Cities may, of course, print such charters and distribute them to interested persons; but it should be noted that the source of such a charter is the legislature—in this case by use of a special act.

In an earlier chapter the abuse of the power of the legislature to pass special legislation for cities, and the resulting constitutional prohibition on such legislation were considered. More than 30 states now prohibit special legislation incorporating cities or amending their charters. In these states various methods may be used in chartering cities.

The first method which may be used is for the legislature to enact

one city charter in the form of law. This then becomes the charter or fundamental law for all the cities in the state. After incorporating as provided in the state law, their form of government and their powers are determined by this general law. With all cities being under one law, there can be no favoritism or discrimination by the state legislature. The weakness of this plan is the obvious injustice of treating all cities alike, regardless of their size. They may not all agree as to the best form of government, and their needs as to powers and governmental organization will vary.

The method most generally used to meet this problem is classification. Under this plan the cities in the state are classified on the basis of population, and a charter is enacted for each class or population group. The classes may be defined in the constitution of the state or this may be done by statute. In the latter case, as has been pointed out in an earlier chapter, the legislature may abuse its power to classify, as when only one city is placed in a population classification. While classification by population is subject to abuse when done by the legislature, it offers one means of making the city charter more suitable to the needs of individual cities. Problems of cities vary, and the size of the city is one of the factors with which they vary; but there are also others, such as the type of city (college town, industrial community, or suburban residential community).

If you attempted to find the charter of a city in a state using this plan, it would be necessary first of all to learn the population of the city. Then you would look in the statutes of the state and find all laws applicable to cities of the population group in which this city falls. The sum total of these laws would constitute the charter of the city. It is these laws which guide and limit the city and its officers in their work.

Another method used by state legislatures in chartering cities is the optional charter plan. In these states the legislature enacts laws for different types of cities, depending in this case not upon the size but upon the form of government. The legislature may provide for the mayor-council, commission, and council-manager plans. The city then has a choice as to which of these forms it will adopt. After it has made this choice, its charter will be found in the statutes of the state, being the total of the laws applicable to cities

operating under this form of government. Some of the laws enacted will apply only to cities having one of these forms; others will apply to all cities in the state, regardless of the form. The latter statutes then become part of the charter of all the cities in the state.

More than one method of chartering cities may be used in a state. The optional method may be used but be limited to cities having a certain population. In Illinois, only cities under 5000 population may adopt the council-manager plan, and the use of the commission plan is limited to cities having less than 200,000 population. Population classification is thus used in that state for cities over 200,000, with only one form of government and one charter available, the mayor-council plan. For cities in the population class of 5000 to 200,000 two forms are available, the choice resting with the city; and for those under 5000 three forms are available. A state may grant constitutional home rule to cities of a certain population group; others will be governed by charters drawn up by the legislature.

The home-rule charter is the only type of city charter that is drawn up locally. As pointed out earlier in this chapter, a charter commission is selected locally; its function is similar to that of a state constitutional convention. Subject to the state constitutional grant of power to cities, the charter commission is free to draft, and the people of the city to adopt, a charter which will fit the needs of the particular city. A home-rule charter of one city will differ from that of all the other cities in the state. If you desire to secure a copy of a home-rule charter you must apply to the city clerk.

It should again be noted, however, that not all cities in home-rule states make use of their power to draft their own charters. This in fact is one criticism of constitutional home rule—that cities do not use the power given. For the cities in states having constitutional home rule which do not use their power to draft their own charters, provision must be made by the state legislature. Thus in home-rule states, cities not using their home-rule powers may be operating under a special, general, classified, or optional charter.

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Urban Representation in State Legislatures

With the increase in the population of cities the question has arisen as to the representation of such areas in state legislatures. Representatives from rural districts have foreseen the domination of state legislatures by representatives from cities. They have looked upon this as an unfortunate situation and have sought in various ways to prevent cities from securing the representation in the state legislature to which their population entitles them.

This rural bias, this antipathy toward and fear of cities, appeared early in the history of the country.¹ Thomas Jefferson declared the people engaged in agriculture to be "the chosen people of God, if ever He had a chosen people." He felt that "cities and manufacturing were alike essentially evil" and condemned the former as "ulcers on the body politic." "The mobs of great cities," he said, "add just as much to the support of pure government as sores do to the strength of the human body." In writing to Madison with reference to the adoption of the Constitution of 1787, he said: "I think our governments will remain virtuous for many centuries, as long as they are chiefly agricultural; . . . When they get piled up upon one another in large cities, as in Europe, they will become corrupt as in Europe."²

This distrust of cities by representatives of rural districts appeared in the Massachusetts constitutional convention of 1820. The rural members opposed the chartering of cities for fear they might "en-

¹ In earlier times the problem was the underrepresentation of the frontier districts because of failure to reapportion.

² J. G. Thompson, *Urbanization*, p. 10; H. J. Ford, *The Rise and Growth of American Politics*, p. 104.

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snare and entrap" people from rural districts who went to them on business.³ It was predicted in the New York convention of 1821 that the whole state would be controlled by the propertyless mob of New York City if they were given the vote.⁴ With the increase of the urban population and especially the growth of large cities, this distrust or fear of cities has taken the form of attempts to limit their representation in state legislatures.

The underrepresentation of cities in state legislatures is secured in various ways.⁵ It is accomplished in some states by the maintenance of unit representation in one house of the legislature, with equal distribution of representation to each unit regardless of size. Thus each county is given one and only one senator in Idaho, Montana, New Jersey, and South Carolina; and in Vermont each inhabited town elects one representative. This is the rotten-borough system which prevailed in England up to the time of the Reform Bill of 1832, under which each shire, or county, and each borough were entitled to send two members to Parliament. After the growth of manufacturing and industry in the north of England the over-represented counties in the south of England came to be known as "rotten boroughs." This same disproportionate representation exists in our own country in the states where each county is given equal representation in one or both houses of the state legislature.

The result of such a provision may be illustrated by the state senate in New Jersey, where each of the 21 counties has one senator, and only one. Essex and Hudson Counties contain almost 40 per cent of the population of the state but have less than 10 per cent of the representation in the senate. Cape May County with a population of 28,919 and Sussex County with a population of 29,632 have the same representation in the senate as Essex and Hudson Counties

³ *Journal of Debates and Proceedings of Constitutional Convention* (edition of 1853), p. 194, quoted in R. G. Gettell, *History of American Political Thought*, p. 591.

⁴ *Debates and Proceedings of the Convention*, 1821, p. 115, quoted in R. G. Gettell, *op. cit.*

⁵ For constitutional provisions limiting urban representation in state legislatures, see *Illinois Constitutional Convention Bulletins*, 1920, pp. 550 ff.; *The Michigan Plan, an Equitable Proposal for the Reapportionment of the Michigan State Legislature*, part iv, Appendix C; J. M. Mathews, "Municipal Representation in State Legislatures," 12 *Nat. Mun. Rev.* 135 (Mar., 1923); *New York State Constitutional Convention Committee Bulletins*, 1938, pp. 229-244.

with their combined population of almost 1,500,000. The eight largest counties in the state—with four-fifths of the population—elect eight senators, while the other 13 counties with one-fifth of the population elect 13, or a majority of the members of the senate. A similar situation exists in the lower house in Connecticut.⁶

In other states where population is used to some extent as a basis of apportionment, county or unit representation is also recognized. This may be illustrated by the Alabama provision under which population is partly the basis of representation in the house, but each county is entitled to at least one representative. This plan is followed in other states, such as Connecticut, Vermont, and Wyoming, where population is the basis of apportionment in the senate, except that each county must have at least one senator. Such a provision is found for the house in Arizona, Kansas, Louisiana, Mississippi, Missouri, New York,⁷ Pennsylvania, South Carolina, Utah, and Wyoming. In Rhode Island and Vermont, representation in the house is based on population, but each town and city must have at least one representative.⁸ Clearly such a provision in a state constitution favors the smaller counties, giving them more representation than their population justifies. It is overrepresentation of the rural areas, which in effect is the same as underrepresentation of the urban areas.

A slightly different method of limiting the representation of urban areas is found in California.⁹ The 40 members of the senate are apportioned on the basis of population, but no county, or city and county, may have more than one member, and no more than three counties can be placed in any district. Regardless of how large its population may be, a county can never have over 2.5 per cent of the total representation in the Senate. Los Angeles County

⁶ Lane Lancaster, "Rotten Boroughs and the Connecticut Legislature," 13 *Nat. Mun. Rev.* 678 (Dec., 1924). This situation also exists to a lesser degree in the senate.

⁷ Except Hamilton County.

⁸ A similar principle is followed in Connecticut; but by an amendment of 1876, towns created after that date, unless they have a population of at least 2500 inhabitants, are not entitled to a representative. Larger towns are limited to two representatives.

⁹ *Legislative Apportionment*, published by the Bureau of Public Administration, University of California, 1941; Dean E. McHenry, "Urban vs. Rural in California," 35 *Nat. Mun. Rev.* 350 (July, 1946).

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with a population of 2,785,643 in 1940, or over 40 per cent of the population of the state, elects one senator; and the smallest senatorial district, composed of two counties and having a population of 9923, also elects one senator. The California plan is a limitation of the largest counties but without the guarantee of a representative to every county; the guarantee is at least one to every three counties since not more than three counties can be placed in a senatorial district. Representation in the assembly or lower house is based on population.

Georgia and Missouri follow a system of disproportionate distribution of representation which has the effect of favoring the smaller local units and the rural districts. The constitution of Georgia provides that the eight counties having the largest population shall elect three representatives each; the 30 counties having the next largest population, two each; and the remaining counties, one each. Under this provision Fulton County with a population of 392,886 elects three representatives, while Echols County with a population of 2964 elects one representative. If proportionate representation were given to Fulton County, it would receive 132 representatives instead of three. The nine smallest counties have a total of only 39,487 people; yet they have a total of nine representatives in the lower house, whereas Fulton County with its 392,886 people has only three representatives. In Georgia the constitutional provision obviously results in disproportionate representation and in discrimination against the urban sections of the state.¹⁰ In Missouri the ratio of representation for the house is ascertained by dividing the population of the state by 200. Each county having one ratio, or less, is entitled to one representative; each county having two and one-half times the ratio is entitled to two representatives; each county having four times the ratio has three representatives; each county having six times the ratio is entitled to four representatives; and so on above that number, one additional member being allotted for every two and one-half additional ratios. The plan works to limit the representation of large cities. St. Louis city with a population of 816,048 in 1940 is entitled to 18 representatives under the formula. There are 18 rural counties on the other hand

¹⁰ Constitution of Georgia, adopted in 1945. Also see C. B. Gosnell, "Rotten Boroughs in Georgia," 20 *Nat. Mun. Rev.* 395 (July, 1931).

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with a combined population of only 157,769, and under the formula they are also entitled to 18 representatives. "It is obvious," says Victor D. Brannon, "that this formula for apportioning representatives is designed to neutralize the political effect of city growth."¹¹ Under the 1940 census, St. Louis city, St. Louis County, and Jackson County (Kansas City) have 41 per cent of the state's population but are entitled to only 23 per cent of the total number of representatives.

A moiety clause in Michigan aids in the rural domination of the house.¹² This provides that when any county or group of counties composing a legislative district has a moiety, or more than half of the ratio of population for one state representative, it shall be given a member. Under this plan if a county or legislative district has the ratio of representation, it has one representative; but if another county or legislative district has half this number, or a moiety, it is also given one representative. Under this moiety provision the rural districts in that state have been able to retain control of the legislature, even though the state has become highly urbanized. With approximately 40 per cent of the population of the state, Wayne County under the apportionment of 1925 elected 21 of the 100 representatives in the lower house. Under a re-apportionment made in 1943, Wayne County, as a result of the moiety clause in the constitution, received only 27 out of the 100 members, rather than the 38 members to which it is entitled on the basis of its population.¹³

Some states provide for the direct limitation of the representation of urban areas in the state legislature. In Alabama, Florida, and Iowa no county may have more than one senator. Though Baltimore has approximately one-half the population of Maryland, it is limited to six out of 29 senators.¹⁴ In New York no county may have more

¹¹ Victor D. Brannon, "Missouri's Apportionment Key," 35 *Nat. Mun. Rev.* 178 (Apr., 1946). The provisions of the new Missouri constitution of 1945 relating to the basis of representation in the state legislature are the same as those in the constitution of 1875.

¹² C. W. Shull and J. M. Leonard, *Re-apportionment of the State Legislature in Michigan*, Detroit Bureau of Governmental Research, 1940.

¹³ C. W. Shull, "Michigan Secures House Reapportionment," 32 *Nat. Mun. Rev.* 256 (May, 1943).

¹⁴ In 1940 the population of Baltimore was 859,100, and of the state, 1,821,244.

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than one-third the total number of senators, and no two adjoining counties may have more than one-half the total membership.¹⁵ No city or county in Pennsylvania may have more than one-sixth of the total membership of the senate.¹⁶ In Rhode Island no town or city may have more than six senators, and no town or city may have more than one-fourth of the total membership of the house. Providence had 35 per cent of the population of the state in 1940, but under this provision it could have only 25 per cent of the total membership of the house. The Oklahoma constitution provides that no county shall ever elect more than seven members of the house of representatives, regardless of its population. Furthermore, any county having a population equal to one-half the ratio of representation is given one representative. This ratio is determined by dividing the population of the state by 100. On the basis of population, Oklahoma County is now entitled to 11 members and Tulsa County to nine. The population of Oklahoma County is equal to the combined population of 21 small counties which elect 21 representatives. Seven small counties with a total population of 57,159 in 1940 elect as many members of the lower house as Oklahoma City with a population of 244,159 or Tulsa with 193,363. The result in Oklahoma, according to a recent study, is that "any plea of the municipalities for sufficient powers, by which they may effect their orderly development, has little prospect of a particularly friendly reception by a legislature whose membership, disproportionately, is responsible to rural election units."¹⁷ In Delaware representation in both houses of the state legislature is apportioned by the constitution of 1897 and can be changed only by constitutional amendment. New Castle County, with 67 per cent of the population of the state, has 15 out of 35 members of the house of representatives and seven out of 17 members of the senate.¹⁸ Texas by a constitutional amendment adopted in 1936 limits to seven the number of representatives from any one county unless the population exceeds 700,000, in

¹⁵ As New York City comprises five counties it is affected only as regards the two most populous counties, New York and Kings.

¹⁶ Philadelphia has over one-fifth the population of the state. In 1940 the population of the state was 9,900,180, and of Philadelphia, 1,931,334.

¹⁷ H. V. Thornton, "Oklahoma Cities Weakened," 35 *Nat. Mun. Rev.* 295 (June, 1946).

¹⁸ In 1940 the population of the state was 266,505, and of New Castle County, 179,562.

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which case one additional representative is allowed for each 100,000 population. The total membership of the house is fixed at 150. If an apportionment were made on the basis of the 1940 census, each member of the house would represent 42,765 people. Obviously the restriction as to the number of representatives from any one county prevents the populous urban counties from receiving the representation to which they are entitled on the basis of their population. As will be pointed out later, there has been no reapportionment in Texas since 1921.

In 1943, an act of the New York legislature provided for the redistricting of legislative seats. This had not been done for a quarter century. The representation of New York City was increased from 62 to 67 assemblymen and from 22½ to 25 senators. Because of constitutional restrictions, this city received only 44.6 per cent of the membership in the assembly and senate even though it has 54.5 per cent of the total population and 53.4 per cent of the citizen population, the latter being the basis of apportionment in the state. Some further concession was thus made to the principle of representation on the basis of population, but minority dominance continues.¹⁹

An indirect limitation of the representation of urban areas is provided in some states. In them apportionment is made, not on the basis of population, but on some basis that excludes elements which cities possess in a larger proportion and thus lessens their numbers for apportionment purposes and consequently their representation in the state legislature. In apportioning members of the state legislature, Massachusetts and Tennessee exclude all but legal voters; California excludes persons ineligible for naturalization; Maine, foreigners not naturalized; and New York and North Carolina exclude aliens. Most, if not all, of these provisions have the effect of limiting the representation of cities in state legislatures. It appears that the Massachusetts provision, which was first put in the constitution by an amendment of 1852, was due in part to the anti-Boston sentiment and the desire of rural areas to restrict urban power.²⁰

¹⁹ 33 *Nat. Mun. Rev.* 198 (Apr., 1943); John A. Perkins, "State Legislative Reorganization," 40 *Am. Pol. Sci. Rev.* 510 (June, 1946). The constitutionality of this act was upheld by the Court of Appeals. *In re Fay*, 52 N.E. (2d) 97 (1943).

²⁰ *Debates of Massachusetts Constitutional Convention, 1917-1918*, vol. 3,

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Limitation of the representation of cities in state legislatures has been secured in some states by a failure to reapportion. The use of a moiety clause to limit Wayne County (Detroit) in the lower house of the Michigan legislature has been referred to earlier in this chapter. There are also great inequalities in the senate as a result of the failure to reapportion senatorial seats since 1925. The four largest senatorial districts in that state, all in or around Detroit, contain 1,600,000 people. While these 1,600,000 people send four senators to Lansing, the 1,700,000 people living in the 16 smallest senatorial districts send 16 senators. Thus 1,600,000 people living in the Detroit area elect one-eighth of the senators; 1,700,000 in the rural areas elect one-half. The disparity in districts is great, the largest, a Wayne County district, having 528,234 people, and the smallest, in the rural area of the state, having a population of 72,350.²¹

Though the Illinois constitution provides that the legislature shall reapportion after each decennial census, no reapportionment has been made since 1901. Under this apportionment, Cook County (Chicago) received 19 of the 51 senators and 57 of the 153 representatives. In 1940 Cook County had over one-half the population of the state and would secure control of both houses of the legislature if a reapportionment were made. The population of Cook County in 1900 was 1,838,735; in 1940 it was 4,063,342. Despite this population increase of over 2,000,000, the representation of the county remains at 19 senators and 57 representatives, the same as in 1900.²² The downstate section with a less rapid increase in population still has 96 of the 153 representatives, and 32 of the 51 senators.

p. 169. On the principles of legislative apportionment as found in American state constitutions, see A. Z. Reed, "The Territorial Basis of Government Under State Constitutions," 40 *Columbia Univ. Studies in History, Economics and Public Law* (No. 3), 1911, especially chaps. vii-viii.

²¹ *Detroit Free Press*, Sept. 22, 1941; a series of articles by James H. Haswell. These articles were called to my attention by Charles W. Shull, Wayne University.

²² *Reapportionment in Illinois*, Illinois Legislative Council, 1945; Charles M. Kneier, "Chicago Threatens to Revolt," 14 *Nat. Mun. Rev.* 600 (Oct., 1925); R. L. Mott, "Reapportionment in Illinois," 21 *Am. Pol. Sci. Rev.* 598 (Aug., 1927); W. F. Dodd, "Political Geography and State Government," 14 *ibid.* 242, 265 (May, 1920); John F. Miller, *Limitation of Metropolitan Representation in the State of Illinois* (manuscript), 1929, University of Illinois Library; C. E. Merriam, S. D. Parratt, and A. Lepawsky, *The Government of the Metropolitan Region of Chicago*, chap. xxviii.

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The result is that the average number of persons per senatorial district is 213,854 in Cook County and 119,778 downstate.

Cook County and Chicago have tried to force the legislature to reapportion the state legislative districts. The people of Chicago have threatened to secede and form a separate state. This would require the consent of the state legislature and of Congress, and seems to be a rather remote possibility.²³ A threat has been made to withhold state taxes collected by the county until a reapportionment is made. As the bondsmen of the county treasurer would be held liable for such money, this method offers little hope.

Efforts have been made by Cook County and Chicago to nullify acts of the legislature on the ground that they were passed by an illegally established body of *de facto* rather than *de jure* existence, since the members were not elected from districts established in accordance with the provisions of the state constitution providing for a decennial reapportionment.²⁴ Attempts have been made to restrain the disbursement by the state treasurer of public moneys to pay the expenses or salaries of the state legislature on the ground that because of the failure to reapportion it was an illegal body.²⁵ By quo warranto writ they have questioned the right of members of the legislature to hold office.²⁶ All these efforts have failed.

Recourse has also been had to the courts through the writ of mandamus. This too has failed. As stated by the Supreme Court of Illinois:

Many constitutional duties are imposed upon the legislative and executive departments and they are responsible to the people for a failure to perform them. . . . The constitution enjoins upon the legislative department the duty to re-apportion the State into senatorial districts at prescribed intervals. The performance of that duty involves the exercise of legislative power, which is vested solely in the General Assembly. Another department of the State government is powerless to compel a re-apportionment, and, apart from a constitutional amendment, the people have no remedy save to elect a general assembly which will perform that duty.²⁷

²³ T. H. Reed, *Methods of State Separation* (pamphlet).

²⁴ *People v. Claridy*, 334 Ill. 160, 165 N.E. 638 (1929).

²⁵ *Fergus v. Kinney*, 333 Ill. 437, 164 N.E. 665 (1928).

²⁶ *People ex rel. Fergus v. Blackwell*, 342 Ill. 223, 173 N.E. 750 (1930).

²⁷ *Fergus v. Kinney*, 333 Ill. 437, 164 N.E. 665 (1928). See also *Fergus v.*

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In 1929 a case was carried to the Supreme Court of the United States asking for a review of the decision of the Supreme Court of Illinois on the ground that it failed to remedy a situation, the existence of which deprived the state of the republican form of government guaranteed by the United States Constitution. The court dismissed the petition.

The Illinois situation has been discussed at length because it illustrates the difficulties which will probably arise in other states in the future when one city increases in population to the point where a reapportionment will give it control of the state legislature. In 1940 there was a lag in apportionment in several states.²⁸ Among the states in which there had been no reapportionment during the preceding ten years were Florida and Michigan, with the latest apportionment in 1925; Kansas in 1923; Indiana, Missouri, North Carolina, and Pennsylvania in 1921; Texas in 1921; New York in 1917; Minnesota in 1913; Tennessee in 1905; Alabama and Illinois, in 1901; Kentucky, by constitution in 1893; and Mississippi in 1892, with an amendment in 1918. Reapportionment has since been carried out in either one or both houses in New York, Michigan, and Kansas.

Minnesota, whose last legislative reapportionment was made in 1913, also illustrates the failure to keep legislative districts abreast of population changes.²⁹ In that state there is no requirement of county representation, so that present inequalities are a result of failure to take action for over thirty years. At the present time the population per representative varies from 7254 to 64,250; and the number per senator ranges from 17,653 to 128,501. Nine urban counties have 45.4 per cent of the state's population but only 37.3 per cent of the senators and 34.4 per cent of the representatives. Hennepin and Ramsey Counties, in which are located Minneapolis and St. Paul, have 31.5 per cent of the state's population but elect only 22.3 per cent of the senators and 22.9 per cent of the representatives. On a population basis they are entitled to 10 more representatives and five more senators. Despite these inequities, the legis-

Marks, 321 Ill. 510, 152 N.E. 557 (1926); *People v. Sweitzer*, 328 Ill. 551, 160 N.E. 108 (1928).

²⁸ C. W. Shull, "Reapportionment: A Chronic Problem," 30 *Nat. Mun. Rev.* 73 (Feb., 1941).

²⁹ See Louis C. Dorweiler, Jr., "Minnesota Farmers Rule Cities," 35 *Nat. Mun. Rev.* 115 (Mar., 1946).

lature has refused to take action, and resort to the courts has been of no avail.³⁰

Reapportionment has been secured in some states by the use of the initiative. No reapportionment was made in California after the census of 1920, and in 1926 by initiative petition the compromise plan of representation in the state legislature, discussed earlier in this chapter, was adopted by the voters of that state. Washington had no reapportionment between 1901 and 1930; in the latter year the voters were able to secure a reapportionment of both houses by the use of the initiative.³¹ It was only in this way that Seattle secured the representation to which it was entitled on the basis of population. The control of the state legislature by rural areas was temporarily weakened; but no reapportionment has been made since 1930 and marked inequities in representation have again developed.³² In Colorado there was a reapportionment of legislative districts in 1913, but no action was taken after the 1920 census and nothing was done at the 1931 session on the basis of the 1930 census. The voters of that state, by a favorable vote on an initiated measure, then adopted a reapportionment plan which discriminated against the more populous counties. The initiative offers a method by which reapportionment may be secured in other states. The rurally dominated legislatures in some states have foreseen this danger and consequently have failed to provide for the use of the initiative and referendum. In Illinois a public policy law has been provided, under which a favorable vote on an initiated petition does not enact it into law. It is merely an expression of public policy, a pious wish that the legislature will act in conformity with the desires of the electorate as revealed by the vote. The final determination, however, remains in the hands of the rurally dominated state legislature.

Where the limitation of urban representation in state legislatures is secured by a failure to reapportion, there often results an inequality in population not only as between urban and rural districts, but also as between urban districts or rural districts. Some districts

³⁰ *Smith v. Holm*, 19 N.W. (2d) 914.

³¹ F. W. Hastings, "Voters Initiate Reapportionment," *State Government*, Feb., 1931, p. 7. The Supreme Court of the state upheld reapportionment by the initiative. *State ex rel. Miller v. Hinkle*, 156 Wash. 289, 286 Pac. 839.

³² Donald H. Webster, "Voters Take the Law in Hand," 35 *Nat. Mun. Rev.* 240 (May, 1946).

increase in population greatly, while others grow slowly or even decline. As a result of the failure of the Illinois legislature to reapportion legislative districts since 1901, the population of one Cook County district in 1940 was over 574,000, whereas in another district the population numbered less than 36,000. The same discrepancy appears between downstate districts. Although several legislative districts in downstate Illinois have a population of less than 100,000—the smallest has 74,527—one district has over 217,000. The same situation exists in other states where there has been a failure to reapportion legislative districts for several years.

THE FUTURE OF THE PROBLEM

The question arises as to how the problem of urban representation in state legislatures will be met in the future.³³ In states in which one large city predominates, like Chicago in Illinois, and the problem is merely one of a failure to reapportion, it seems as if this problem may solve itself in time. In that state the problem is gradually changing from Chicago versus the downstate section to urban versus rural. Other urban areas in the state are beginning to appreciate that they too are underrepresented in comparison with rural districts and that reapportionment will be to their benefit as well as to that of Chicago. Some representatives from such areas have already joined the representatives from Cook County in voting for reapportionment so as to secure proportionate representation for their own underrepresented areas. Other representatives may appreciate this situation in the future and a majority vote be secured for reapportionment as provided in the constitution.

Where one great city having over one-half the total population of the state develops, however, there will unquestionably be strong opposition to giving it representation, and thus control, in both houses entirely on the basis of population. The proposed constitution of 1922 in Illinois provided a compromise plan of representation for Cook County. This provided that proportional representation be granted to Cook County in one house but that a perpetual restriction

³³ For an excellent discussion of this question, see Valdimer O. Key, Jr., "Procedures in State Legislative Apportionment," 26 *Am. Pol. Sci. Rev.* 1050 (Dec., 1932).

be placed on its representation in the other. A similar proposal was made in 1931 by the Wayne County (Detroit) Board of County Supervisors for Michigan. Some advocates of this compromise plan believe that it would be unwise in principle to have a single city in control of both branches of the state legislature. Others who believe in the principle of representation according to population feel that the urban and rural views on this question are irreconcilable and consider that a compromise is necessary.

The plan adopted by the voters of California in 1926 was such a compromise. As pointed out earlier in this chapter, this plan provides for representation in the lower house on the basis of population. A limitation, however, is placed upon urban representation in the senate. Advocates of the plan maintained that such a compromise was necessary to "create a well-balanced legislature in which neither the cities nor the countryside may predominate." They went on: "The growth of city population in California, and particularly the unprecedented development of the two great urban regions of the state, will have the effect, if representation is reapportioned according to present law, of consolidating political power in the inhabitants of 3 per cent of the area of the state to the prejudice of the representative rights of the balance of the population who inhabit 97 per cent of the area of the state."

Opponents of the plan stressed population rather than area as the proper basis of representation in state legislatures. They pointed out that "the provision that no county or city and county shall contain more than one senatorial district would limit Alameda, Los Angeles and San Francisco to one senator each. These three combined have 200,000 more than half the population of the state, so the result would be that the majority would have only three senators, and the minority would be represented by thirty-seven senators."³⁴ The vote was in favor of the plan. The non-urban areas of the state are by this means given control of the senate. A senate majority representing as little as 12.7 per cent of the people has in effect a veto power over state legislation.³⁵ In the assembly or lower house, where representation is based on population, the urban areas have control.

³⁴ California publicity pamphlet of 1926, quoted in W. F. Dodd, *State Government*, 2nd ed., p. 159.

³⁵ Dean E. McHenry, *op. cit.*, p. 353.

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By rural control of the senate and urban control of the assembly each interest has a veto or check on legislation which it considers detrimental to its welfare.

That a writ of mandamus will not be issued by the courts to compel a reapportionment of a state legislature as provided in a state constitution seems to be well established. This situation should be met by providing that in case the state legislature fails to make an apportionment as provided in the constitution, it shall be the duty of designated state officers (such as the secretary of state, the attorney general, and the auditor of public accounts) to make the apportionment.³⁶ The Board of Supervisors of Wayne County (Detroit), Michigan, in their report of 1931 stated that as experience had demonstrated that it was impracticable to delegate the duty of reapportioning to the legislature, it should be assigned to the secretary of state and that he should be required to make such reapportionment immediately after and on the basis of each federal decennial census. It was recommended that the constitution provide expressly that this officer might be compelled to act by mandamus.³⁷

Some states have attempted to meet the situation that arises when the legislature fails to pass a reapportionment act after a decennial census. California provides for a special commission to perform this function if the legislature fails to act. A reapportionment commission consisting of the lieutenant governor, the attorney general, the surveyor general, the secretary of state, and the state superintendent of public instruction must apportion the legislative districts if the legislature fails to do so at the first regular session following a decennial census. South Dakota has recently adopted a similar plan. Missouri formerly used such a plan.³⁸ A few states vest the original

³⁶ This was the proposal in the proposed Illinois constitution of 1922. Cf. the provision in the Missouri constitution: *State v. Hitchcock*, 241 Mo. 433, 146 S.W. 40 (1912); *State v. Becker*, 290 Mo. 560, 235 S.W. 1017 (1921). Also see Lloyd M. Short, "Congressional Redistricting in Missouri," 25 *Am. Pol. Sci. Rev.* 634 (Aug., 1931).

³⁷ *The Michigan Plan: An Equitable Proposal for the Reapportionment of the Michigan State Legislature*. For an interesting and novel plan used in Florida, see *Florida Constitution*, Art. VII, sec. 3. For the Ohio plan and results, see F. R. Aumann, "Rotten Borough Representation in Ohio," 20 *Nat. Mun. Rev.* 82 (Feb., 1931).

³⁸ *State ex rel. Lashly v. Becker*, 290 Mo. 560 (1921); *State ex rel. Jordan v. Becker*, 329 Mo. 1053 (1932).

power of apportionment in some officer or commission rather than in the legislature. In Maryland it is the duty of the governor; and in Arkansas and Ohio a commission is provided, composed of ex officio state officers. The findings of the Arkansas commission are subject to revision or mandamus by the state Supreme Court.

A new method of insuring legislative reapportionment after each decennial census is provided in the Missouri constitution of 1945. The governor is required to appoint a redistricting commission within ninety days after each decennial census. It is the duty of this commission to redistrict the state senatorial districts on the basis of a quotient computed by dividing the total population of the state by 34. No district may vary from the quotient by more than 25 per cent. If a plan is not adopted within six months, approval by seven of the ten members being required, the commission is discharged, "and the senators to be elected at the next election shall be elected from the state at large," after which a new commission is appointed. The provision requiring the election of senators from the state at large if no reapportionment is completed is intended to make the constitutional requirement effective. Candidates will want to avoid the expenses and uncertainties of election at large and will bring pressure on the commission to carry out its duty and reapportion as provided in the constitution. Representatives are reapportioned among the counties after each decennial census by the secretary of state, who applies the formula provided in the constitution. Since his work involves merely making arithmetical computations, it is believed that if he fails to act, a writ of mandamus can be obtained against him because he has no discretionary power.³⁹

INDEPENDENT STATEHOOD FOR LARGE CITIES

One suggestion that has been made for meeting the problem of representation of large cities in state legislatures is to give them independent statehood.⁴⁰ This would require the consent of the state legislature and the subsequent consent of the United States

³⁹ Victor D. Brannon, *op. cit.*, p. 178.

⁴⁰ For an excellent discussion of the feasibility of independent statehood for Chicago, see C. E. Merriam, S. D. Parratt, and A. Lepawsky, *op. cit.*, chap. xxviii.

Congress.⁴¹ Such a proposal is usually dismissed with the statement that such an arrangement is impossible because the legislature would never give its consent. However, where one city has more than half of the population it might elect the governor, all other state officials, and both United States Senators. Though we may limit the city in the state legislature, it may if it so desires elect these other officials. This would be most displeasing to the rural sections of a state.

In view of the possible indirect economic and political methods by which a great city may gain control in a state, despite its limitation in the state legislature, Charles E. Merriam concludes that there is reason to believe that the downstate section would not be wholly adverse to independent statehood for Chicago.⁴² In discussing this question, he says: "Probably greater difficulty would be encountered in obtaining national approval of a plan for statehood than in the state itself." The opposition in Congress would probably come from smaller states and from rural areas. Though not impossible, independent statehood for large cities seems remote.

CONCLUSION

With the urbanization of the country, the urban-rural conflict has led to difficulties in working out a satisfactory plan of representation for cities in the state legislatures. To many residents of rural areas, and to representatives of such sections in state legislatures and constitutional conventions, the cities are "rotten spots in our body politic" and "a serious menace to our civilization."⁴³ The farmer looks upon the urbanite as a "slicker" and a "highbrow."⁴⁴

The political cleavage between country and city is the one in which we are primarily interested. It should be pointed out that

⁴¹ Constitution of the United States, Art. IV, sec. 3.

⁴² C. E. Merriam, S. D. Parratt, and A. Lepawsky, *op. cit.* The fourteen northern counties of Illinois now have a majority in both houses of the legislature and could vote to form a separate state. But the question arises as to whether the counties outside of Cook County would so vote. And there is the further question whether Cook County alone would want to become a separate state if other counties could not be induced to join in the new venture.

⁴³ See J. G. Thompson, *op. cit.*, chap. i. For a contra view, see *ibid.*, chap. ii.

⁴⁴ Gerald W. Johnson, "The Rise of the Cities," 157 *Harper's Magazine* 246 (July, 1928); Charles A. Beard, "The City's Place in Civilization," 39 *Am. City* 101 (Nov., 1928).

this political cleavage, the determination of the rural resident that his state legislature shall not be controlled by "city gangs," has its basis in part on other divisions.⁴⁵ In both kind and degree of religious faith, country and city differ in many states. The high percentage of the foreign-born population in cities, the extremes of wealth, what the rural resident considers the lax moral standards of the city dweller, conflicting views on moral issues—all make more difficult the solution of the representation problem, if the solution proposed is control of the legislature by representatives from great cities. While much if not most of the refusal to reapportion is based on the desire to protect the political and economic advantages derived from rural control of the state legislature, there are some persons who sincerely believe that they would be disloyal to their state if they permitted great cities to dominate the legislature. The welfare of the state would be endangered by such action; and they are unwilling to "sell short the state we love" merely because a constitutional provision requires reapportionment.

State legislatures dominated by rural members as a result of plans limiting urban representation have been referred to as "government by yokel." The representatives from rural districts have been derisively referred to as the "cornstalk brigade" (Middle West), as representatives from the "cow country" (Northwest), and as "rustics." Critics of underrepresentation of cities say that "people, not cow pastures" should be the governing power. To the city dweller the farmer is a "clodhopper" and a "hick," and control of the state legislature by representatives from rural sections is distasteful.⁴⁶

Limitation of the representation of urban populations in state legislatures may be considered from two points of view—principle, and practical results. On the grounds of principle it seems questionable whether it is wise to put control of the state in the hands of a minority of the people, or of those who pay less than one-half the taxes. Rather than being dominated by the welfare of the state and of the majority, they will consider the effect of legislation upon their own interests, in this case the interest of a minority. This seems to

⁴⁵ D. W. Brogan, *Government of the People*, Part III, chap. ii.

⁴⁶ Orville A. Welsh, "Progressive Hopes and Rotten Boroughs," 120 *Nation* 14 (Jan. 7, 1925).

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be an unwise principle to incorporate into the practice of our state governments.

Insofar as the objection to underrepresentation is based on principle, however, the same objection can be made to certain features of our national government. Each state elects two United States Senators. New York and Nevada each have two Senators. Nevada has one for each 55,123 people, and New York one for each 6,739,-571. If a New York Senator represented the same number of people as a Nevada Senator, there would be 250 United States Senators in Congress from New York. The Constitution provides that each state shall appoint a number of presidential electors equal to the number of Senators and Representatives to which the state is entitled in Congress. Thus in 1940 New York had 47 electors, or one for every 286,-790 people; Nevada had three, or one for every 36,749 people. Thus it is evident that it is not only in the underrepresentation of urban areas in state legislatures that we deviate from a strict application of the democratic principle of representation according to population.

One explanation that has been made of the limitation of urban representation, especially of large cities, in state legislatures is party advantage. Rural and urban sections are often of opposite political faiths, and the party representing the rural sections realizes that reapportionment and an increase in urban representation would favor the opposing party. Whether this is the purpose of such limitation or not, it is in many cases the result. New York City has been able to elect Democratic governors; but through the limitation of that city's representation, the upstate section has controlled the Republican legislature. A similar situation has developed in other states.⁴⁷

It should be noted, however, that when the party of opposite faith does get control of the legislature, little effort is made to remedy the situation relative to underrepresentation of cities. The view has been advanced that underrepresentation has resulted from the desire of political parties to check the radical tendencies of city populations and to prevent their gaining control of state legislatures. According to this view, there is fear that with a majority of the

⁴⁷ *Ibid.*; cf. C. C. Hubbard, "Legislative War in Rhode Island," 13 *Nat. Mun. Rev.* 477 (Sept., 1924).

representatives coming from cities, an element of instability will be introduced into the party. Otherwise, they point out, it is hard to account for the fact that a party which is strong in cities does not give them the representation to which they are entitled. The instinct of self-preservation for the party dictates otherwise, according to this view. "The distrust of the stability of political opinion in the cities leads both parties to hold them to a minimum of representation."⁴⁸ Another explanation might be that where state legislative districts are used as a basis of political party organization, the underrepresentation of large cities in the legislature also applies to party affairs. If legislative districts are used to select delegates to state conventions, or for the election of members of state party committees, the rural voters have an advantage. It means that they have more relative weight in determining policies, insofar as they are determined by state conventions or by state committees, than their numbers justify. This applies, however, only where the state legislative districts are used as a basis for party organization.

The limitation of urban representation appears in some states to be part of the liberal-conservative division over economic and social welfare legislation. It has been stated that in California, "certain business interests in the state have found it easier to make their influence felt in the legislature through senators from rural areas. Privately owned utilities, banks, insurance companies and other concerns with crucial legislative programs have discovered some 'cow country' legislators more responsive to their demands and less committed to contrary points of view on key social and economic questions than are urban representatives. The urban legislator is more likely to be influenced by organized labor and by the many popular movements that ebb and flow through California politics."⁴⁹ Whether or not this has been a factor in limiting urban representation in other states is hard to determine, but pretty clearly it has been a result. It has decreased the power of lobbyists for organized labor and strengthened that of lobbyists for agricultural organizations.

The more important question is whether there have been any

⁴⁸ L. S. Rowe, "The Political Consequences of City Growth," 9 *Yale Rev.* (old series) 20 (May, 1900). But on the comparative radicalism of urban and rural population, see W. B. Munro, *The Government of American Cities*, p. 65.

⁴⁹ Dean E. McHenry, *op. cit.*, p. 353.

practical difficulties or evil consequences from the limitation of urban representation in state legislatures. In the absence of a grant of home rule, as has been pointed out in an earlier chapter, cities are at the mercy of the state legislature relative to their powers. Although the urban population of the state is in a majority, under the plans of underrepresentation discussed above, the cities must come begging on bended knee at the court of the rural legislator. It seems unfortunate that in a state where the urban population predominates, the cities must go to a legislature which representatives of rural districts control to secure a change in their civil service law, their law for pensioning policemen and firemen, and other laws of this nature. All too often the cities have gone away disappointed with the results obtained.

Not only are there cases where the cities have been unable to secure the powers desired, but there are cases where legislation they opposed has been forced upon them because it was considered good policy by the rural representatives in the state legislature. Illustrative of this type of legislation are those laws providing for a fine for any person or corporation displaying for the convenience of the public any but standard time.⁵⁰ While the fine imposed in this case may not be important, it illustrates the practice of what has been referred to as "a kind of permanent envious supervision of city growth by rural 'squires' in the state legislatures."⁵¹

There is strong evidence that rurally dominated state legislatures have discriminated against cities in the framing of state tax measures and the distribution of state aid. Some taxes fall heavier on urban than rural areas, and these are favored by legislators who represent rural sections. State aid can be distributed on a basis which is favorable to the rural sections. The result is that cities subsidize the rural sections of the state. In considering this question, the Detroit Bureau of Governmental Research said, in a publication issued in 1941: "Detroit and Wayne County taxpayers have become accustomed to the rich uncle role in the distribution of State aid. This area is the source of about half of the State's revenues, but receives back about one-third of the various grants-in-aid which the

⁵⁰ Orville A. Welsh, *op. cit.*

⁵¹ 13 *Pub. Management* 373 (Nov., 1931).

State distributes."⁵² At that time bills were pending before the legislature which would require Wayne County residents to contribute \$8,000,000 more for the benefit of up-state areas. "Bills of this type," the Bureau stated, "result from an apportionment of the State legislature so that it is dominated by rural members who are either unable or unwilling to understand the problems of the urban areas." On the basis of either theory or practical results, one can agree that "equality of representation in the lawmaking, taxing and spending bodies of government is a desirable requisite of free government."⁵³ This is especially true relative to the legislative determination of where tax burdens shall fall, and also the geographical distribution of public expenditures.

There is a close connection between the underrepresentation of urban areas in the state legislature and the question of home rule or municipal powers. In a state where rural minorities dominate the legislature, there is an especially strong argument for home rule. Again there seems to be no reason why the minority should force a law upon the majority. If public opinion in cities does not support the laws forced upon them by the ruralists, they will fail. A greater degree of home rule or local autonomy seems a proper step toward the solution of this rural-urban conflict over representation in state legislatures. Representatives of rural districts, in opposing such representation according to population, have expressed fear and distrust of the "city hall crowd" and of the political machine. If they are unwilling to permit the cities to govern themselves through control of the state legislature, they should be willing to grant them the right of self-government.

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Administrative Supervision and Control Over Municipal Government

Attempts to work out a satisfactory relationship between cities and the state by constitutional provision or statutory regulation have been discussed in the preceding chapters. Another possible method of control, or at least one supplementary to those already considered, is administrative control. Under either constitutional or statutory control over cities, there is not sufficient flexibility. There is a tendency to treat all cities alike, the state constitution or state law either requiring or prohibiting certain action on the part of all cities. In several states, the constitution provides that no city may go in debt over a certain percentage of the assessed valuation. In Illinois, "no county, city, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount . . . exceeding five per centum on the value of the taxable property therein." There are, however, some 15,000 local governments in that state, and it will be noted that this provision permits no exceptions to be made—regardless of the purpose for which the debt is incurred. Constitutional or statutory provisions requiring positive action by *all* cities in the state may also work hardships. Obviously it is difficult to lay down a policy in a general law which should be applied to *all* cities in a state (e.g., there are 1100 cities and villages in Illinois) or to *all* local governments; but this is what we tend to do where state-local relations are determined by constitutional or statutory provisions. Many persons who advocate administrative control do so on the grounds

that the older methods are unsound in principle, being too rigid and arbitrary.

The arguments for administrative control are not, however, based upon principles or theoretical considerations as to what should be the relationship between state and local governments. Rather they are based upon the weakness of legislative and constitutional control in practice, as seen in the experience of many years, especially the abuse by the state legislatures of their complete control over local governments. The best illustration of this abuse of state power over local governments is the special legislative acts passed for partisan purposes. The principle that the city is an authority with enumerated powers and that it must look to the legislature for everything it does proved unsatisfactory; hence other solutions have been tried, chief among these being constitutional control, including home rule, and administrative supervision.¹

Constitutional regulation of the relations between state and local governments has not been entirely satisfactory. As pointed out above, constitutional provisions proved to be too rigid and did not readily adjust themselves to the needs of particular cities. Constitutional home rule, which was devised to meet this objection, has been criticized as not giving sufficient weight to the "agent of the state" aspects of the city. There must be some assurance, according to critics of absolute home rule, that certain minimum standards will be observed by cities. Otherwise in police and fire administration, health and sanitation, education, and the other functions in which the city is acting as an agent of the state, there may be a breakdown of state policy. Criticisms can be made of both the constitutional and statutory methods of state supervision and control over local governments.

Those who believe that these other methods of working out a relationship between cities and the state have proved unsatisfactory suggest state administrative supervision and control as the proper means of meeting the problem. Under such a plan the state establishes or makes use of existing boards, commissions, or single officers, giving them powers of supervision and control over cities. The

¹ See F. J. Goodnow, "The Relations of City and State," 1 *Municipal Affairs* 689 (1897); Schuyler C. Wallace, *State Administrative Supervision over Cities in the United States*, chap. i.

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state establishes minimum standards of performance in those fields in which the city is acting as an agent of the state, as in police, fire, and health administration, and seeks to secure compliance with these standards through the supervisory powers vested in the state administrative authorities. A plan of administrative supervision might provide for one state agency for the whole field of municipal government, or there might be a separate board or officer for each function.

While no state has adopted a complete system of administrative control, all the states have some agencies with the power of supervision and control over certain functions.² State tax commissions and state boards of health, education, and public welfare, as well as executive and administrative officers, have in several states been given some supervisory power and control over local governments. In New York and Ohio the state civil service commissions have supervisory powers over local civil service administration. The Local Government Commission in North Carolina, which was established in 1931, and the Department of Local Government, which was created in New Jersey in 1938, illustrate the use of state administrative control; but in both states, emphasis is placed upon supervision over local financial administration. The degree of supervision and the methods used to accomplish it differ in the various states. Some attention will now be given to the various devices or mechanisms for controlling local government by administrative action.

REQUIREMENT OF REPORTS

State supervision and control over local government may be effected and aided by the requirement that reports be made. This requirement is now found in several states, being most widely exercised in connection with finance, health, and education. The information to be collected is sometimes specified by law. In other cases,

² For state control over county government, see J. A. Fairlie, "Judicial and Administrative Control of County Officers," 28 *Mich. Law Rev.* 250 (Jan., 1930). For an interesting proposal for a complete plan of administrative control for New York made in the latter part of the nineteenth century, see F. W. Holls, "State Boards of Municipal Control," *Proceedings of National Conference for Good City Government*, 1896, p. 226; J. W. Jenks, "A State Municipal Board," 2 *Mun. Affairs* 411 (1898).

however, state administrative authorities are given wide discretion as to the information to be obtained.

The information obtained in these reports can be made the basis of future legislative and administrative action. Statistical information collected by state boards of health has been especially valuable in this connection. Such material indicates the effectiveness of the measures being taken by local communities to control and prevent disease. Accurate and exact information is thus available, upon which future action may be based. The value of financial statistics was pointed out in a report of the Committee on Cities of the New York legislature in 1891 as follows: "There can be no wise legislation with reference to the government of the cities unless it be possible for the officers of this state, and especially for the legislature and the Governor, to be able at all times to know with definiteness and certainty the facts relative to the general condition of municipal administration in each of the cities, and more particularly the exact financial situation of each and all of them."³ Adequate information should be of value to the legislature in providing for the proper financial administration of cities. Such reports should enable it to see emerging financial problems and to meet them before the situation becomes acute and difficult of solution.

The publicity given these reports should act as a stimulus to local officials. Being made on a uniform basis, the reports can be published and a comparison made of the results obtained in the various local communities.⁴ If the comparative rating of a city is low in the field of education, health, sanitation, law enforcement, or fire protection, such comparison should serve as an effective incentive to greater efficiency. A spirit of rivalry should develop among cities; and such comparative statistics should provide the citizens with material for criticizing local officials, where the standard of administration lags

³ Quoted in E. M. Hartwell, "The Financial Reports of Municipalities, with Special Reference to the Requirement of Uniformity," *Proceedings, National Municipal League*, 1899, p. 124.

⁴ For illustrations of the type of financial statistics being published, see *Report on Municipal Finances*, issued by the State Auditor of Iowa; *Comparative Statistics of Cities of Ohio*, compiled by the Bureau of Inspection and Supervision of Public Officers in the Office of the State Auditor; and the *Annual Report on the Statistics of Municipal Finance in Massachusetts*, compiled by the Division of Accounts of the Department of Corporations and Finances.

behind that of other cities in the state. Improved administration should result from such a plan.

The Commission to Investigate County and Municipal Taxation and Expenditures in New Jersey, in its report of 1932, pointed out the need of establishing standards of service and costs for the functions being performed by local governments. In the absence of such standards, no one can say whether a given service costs too much. The establishing of a system of standards and costs will aid in determining the places in which and the extent to which economies are possible. As the Commission wrote in its report:

As an aid to careful budgeting, and as an incentive to thrifty stewardship by all public officials and agencies, nothing could be more useful than the establishment of standards for different services and activities, and computation of standard costs. It would put the whole matter of governmental expenditures on a basis where intelligent discussion and criticism is possible; it would give publicity, stimulate comparisons, and it would go far to still the perpetual row between the taxpayers and those who are sometimes referred to reproachfully as the "tax spenders."⁵

It is only after par has been set for the course that we can determine how we rank as golfers. Cities need to have par set for them by the establishment of a system of standards of service and costs. The collection and publication of reports by state administrative authorities is a step in this direction.

Massachusetts pioneered in requiring the reporting of local financial statistics to a state agency in 1906.⁶ The reports are arranged in uniform schedules so that comparisons can be made as to the practices and results in the cities and towns of the state. The filing of data relative to the finances of local units of government is a desirable practice, and should not be looked upon as interference with local self-government. In those states where it has been adopted, the practice of making financial reports to a state agency on a uniform basis has led to improved financial administration by local governments. And the financial practices and policies of the local

⁵ *Report No. 1 of Commission to Investigate County and Municipal Taxation and Expenditures in New Jersey*, p. 192.

⁶ Royal S. Van Dewoestyne, *State Control of Local Finance in Massachusetts*, chap. v.

governments that are unsatisfactory and need improvement are brought to light before it is too late.

Twenty-two states now require municipalities to submit rather complete fiscal reports to some state agency, and such reports are required for counties in 34 states. Only 10 states publish complete state reports of all local units—California, Indiana, Iowa, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Ohio, and Oklahoma. In the other states either no report is published, or those that are published are limited to certain phases of local finance.⁷

INSPECTION BY CENTRAL OFFICIALS

Inspection by central authorities of the manner in which local services are being performed is another method of administrative control. It is closely connected with the devices of reports and advice; it enables state authorities to check up on reports and to see that they reveal the actual situation in the city. Inspection is also a most satisfactory means of advising cities relative to the performance of their functions. In some states, inspection is limited to those cases in which it is sought by the locality, but in others the central authorities may take the initiative and inspect conditions in any city when they see fit.

Inspection by state authority is used in several fields of municipal activity. However, its most extensive use is found in the fields of finance, health and sanitation, and education. Inspection of the local finance administration has been used to check up on the assessment of property by local officials, and to audit municipal accounts. State tax commissions by a method of inspection have been able to discover serious cases of inequitable valuation between pieces of property, between kinds of property, and between local governing units. The material uncovered by such inspections has served as a basis for further action, such as orders and ordinances, or possibly removal of local officials by state authority.

State inspection as a device for administrative control has also been used effectively in the supervision of municipal accounts.⁸

⁷ Wylie Kilpatrick, *State Supervision of Local Finance* (1941), pp. 18-19.

⁸ See chap. xxviii for a further discussion of this question. Also see Wylie Kilpatrick, *op. cit.*, p. 60.

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Although in some states this is limited to certain phases of municipal activity, in others all municipal accounts are subject to state inspection. Such audits may be made in some states only at the request of the city or of a specified number of residents; but in other states the initiative lies entirely with the central authorities. State inspection of municipal accounts was first provided in Wyoming in 1890; Montana followed in 1895; Ohio, in 1902; and Massachusetts, in 1906. This power is now granted in some degree to state authorities in over one-half the states.

This activity illustrates the possible use and value of administrative control. A legislative requirement that accounts be kept in a certain manner is not sufficient, since the officer will in many cases not be acquainted with the state law. This lack of knowledge of the law and the procedure of accounting is as serious as a willful disregard of the law. As stated by one writer: "A vast body of experience proves that a technical duty of this nature requires expert assistance which can be most conveniently provided by a state bureau. A municipal officer, usually elected for a short term and receiving a low salary, seldom has the training which fits him to devise an accounting system."⁹

Such inspections have also served to uncover irregularities in local accounts which were criminal in nature. When a bureau is established and the first thorough investigation of municipal accounts is made, "numerous embezzlements are almost invariably discovered." State inspection of municipal accounting in Indiana brought about during the first year the recovery of \$186,044 which had been improperly taken from the public treasury. Twenty out of fifty analyses of municipal accounts made in New York during 1916 showed discrepancies in accounts, to the detriment of the municipality. An analysis of the objects or purposes of expenditure in 41 cities showed that approximately \$375,000 had been illegally expended.¹⁰

In Oklahoma it is the duty of the examiner and inspector, a state administrative official, to examine the books and accounts of all

⁹ Wylie Kilpatrick, "State Supervision of Municipal Accounts," 12 *Nat. Mun. Rev.* 247 (May, 1923); Wylie Kilpatrick, "State Supervision of Local Finance" (mimeograph), published by American Legislators' Association, Jan., 1933.

¹⁰ Schuyler C. Wallace, *op. cit.* p. 93; Wylie Kilpatrick, "State Supervision of Municipal Accounts."

county treasurers without notice, at least twice a year. During an eight-year period, 29 local officials were sent to the state penitentiary because of irregularities in their accounts that were uncovered by these state examinations. As Professor Carr points out in his study of state control of local finance in Oklahoma, most shortcomings in local accounts are the result of a lack of ability on the part of the local official rather than of a criminal nature.¹¹ In such cases the examiner assists the local official in getting his accounts in shape—assistance which the local official is glad to receive.

Inspection is also widely used as a means of state control over the local administration of health and sanitation. Over 40 states provide for central inspection of such work. Agents of the state board of health visit the cities, investigate health and sanitary conditions, and take such action as may be necessary to remedy the situation. Special provision is made in some states for the inspection of water supplies and waterworks, sewage disposal plants, and swimming pools.

Elementary education is subject to state inspection in more than 30 states. In a smaller number of states this method of supervision is applied to high schools. Inspection is carried out by the state superintendent of public instruction, commissioner of education, or state board of education. This has proved to be an effective method of giving advice and assistance to local units in the administration of education.

The effectiveness of the mechanism of state inspection depends upon the maintenance of an efficient force of inspectors. Coupled with grants of positive powers, such as that of issuing orders, it should be effective in improving conditions in cities. The mere giving of publicity to conditions as they are found to exist will also be of some value. In commenting on the report of the Lexow Committee which was appointed by the New York legislature in 1894 to investigate the operations of the police department of New York City, one writer said: "The plainest lesson of the investigation was the need of a regular and systematic state visitation and inspection, proceeding not spasmodically and by reason of extraordinary local pressure, but constantly, conservatively and wisely, always resisting retrogression and striving to advance the local departments in honesty and

¹¹ R. K. Carr, *State Control of Local Finance in Oklahoma*, pp. 224-225.

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discipline."¹² This statement might well be applied to the need for inspecting practically all the functions performed by the American city at the present time.

ADVICE, INFORMATION, AND SERVICE

In view of the technical duties of many city employees, there is need of an agency to which they can turn for information and advice.¹³ This is especially true because of the heavy turnover in the personnel of a city government, both elective and appointed. The president of the Borough of Queens, New York City, at the 1930 convention of the National Municipal League, advocated a state department of cities to function as an advisory agency to which cities might turn for information and guidance.¹⁴ If such a bureau were created, it should tend to end the "junketing tours" to other cities which are now made by city officials to get the benefit of other experience.

While no state agency has been created for this purpose, several administrative boards do advise and give service to cities within the fields of work covered by the particular boards. Advice and information are provided in some cases by correspondence, such as circulars, bulletins, and replies to specific inquiries. Schools and conferences for local officials are also held under the auspices of state authorities for this purpose. The device of inspection which was discussed in the preceding section is also used as a means of advising local officials.

Provision for state agencies to act in an advisory capacity to cities has been made most frequently in connection with finance. This has been developed especially in connection with assessing officers. The laws of several states now require the holding of conferences for the purpose of informing and advising taxing

¹² Frank Moss, "State Oversight of Police," 3 *Mun. Affairs* 264 (1899).

¹³ "Power may be localized, but knowledge to be most useful must be centralized; there must be somewhere a focus at which all its scattered rays are collected, that the broken and colored lights which exist elsewhere may find there what is necessary to complete and purify them." J. S. Mill, *Representative Government*, p. 304, quoted in J. A. Fairlie, "The Centralization of Administration in New York State," 9 *Columbia University Studies in History, Economics and Public Law*, No. 3, p. 202 (1897).

¹⁴ 19 *Nat. Mun. Rev.* 798 (Dec., 1930).

officials relative to the taxing laws and the method of procedure in assessment.

This method of supervision and control is also extensively used in health administration. Over 40 states now make use of conferences as a means of advising local health authorities. Extensive use is also made of bulletins and correspondence, and of inspectors to advise local health authorities relative to their duties. A report of the Maryland State Board of Health shows the need and possible use of advice as a means of administrative supervision. After describing the unsatisfactory conditions found in a small water-filtrating plant in the state, the report stated:

Our first duty, therefore, was to explain in detail to the operator, the mode of operation of rapid sand filtration plants, and the importance therein of continuous alum dosage. When this had been done, it was necessary in this plant, as in others, to provide definite data as to the quantity of alum necessary under varying rain conditions, to calibrate orifices for controlling dosages and to provide in advance a schedule of the necessary quantities of alum to be mixed under all conditions of operation.¹⁵

Such administrative agencies might also be used to advise the state legislature. Proposed bills dealing with municipal problems could be referred to them for recommendations. As a result of the use of other devices of supervision and control, such as inspection and reports, they should be able to give information and make recommendations that would lead to wiser and more satisfactory legislation. The legislature's time in making investigations would also be saved.

The function of such state agencies extends in some cases beyond the giving of advice. Provision is made that they shall render certain services to the cities. This may be illustrated by the use of laboratories by state departments of health to analyze specimens sent in by municipal health officers.

Bureaus of criminal identification and investigation, which have now been created in several states, render assistance to cities. The bureaus obtain and file fingerprints, photographs, and other informa-

¹⁵ *Maryland State Board of Health, Report*, 1916, p. 179, quoted in Schuyler C. Wallace, *op. cit.*, p. 127. Also see C. V. Chapin, "State Boards of Health," *1 Proceedings of American Political Science Association* 143 (1904).

tion concerning all persons convicted of serious crimes. They not only furnish this information to peace officers upon request, but further cooperate and assist by broadcasting by wire, mail, or radio such information as may help in controlling crime and detecting criminals. They assist local officers in the establishment of local bureaus of identification in each county. In some cases they furnish special investigators when needed by local authorities, as when there is reason to believe that latent fingerprints have been left behind by a criminal.¹⁶

The Local Government Act which was passed in North Carolina in 1931 illustrates the way in which state boards may be of service to local governments. This act provides that all bonds and notes of local government units shall be sold by the Local Government Commission in Raleigh. The law provides that, after publication of notice of sale, they shall be sold to the highest bidder. The proceeds are then remitted to the proper local authorities. James W. Fesler in commenting on this work of the commission says, "This centralization of the task of marketing local government issues has greatly widened the market for local bonds and notes, secured substantially lower bids on interest rates, and improved the technical handling of such sales."¹⁷

The Commission to Investigate County and Municipal Taxation and Expenditures in New Jersey pointed out in its report that, in the borrowing of money by cities, "of all the factors which affect interest rates, the selling procedure is one of the most important." In recommending the sale of municipal bonds through a state agency, as provided in the North Carolina law, the report stated: "Expert knowledge in selling securities depends upon constant contact with the bond market. As a result the bond buyers are expert while the municipal officials ordinarily cannot be. The officials of a large city are more conversant with the problem of selling securities than those of small places, but no official ordinarily is sufficiently well informed to qualify as an expert." The advantages of the creation of a single state agency were stated as follows: "To

¹⁶ M. H. Satterfield, *State Supervision and Control over Local Law Enforcement Officers*, Master's Thesis, 1929, University of Nebraska Library.

¹⁷ J. W. Fesler, "North Carolina's Local Government Commission," 30 *Nat. Mun. Rev.* 327 (June, 1941). See also C. B. Masslich, "North Carolina's New Plan for Controlling Local Fiscal Affairs," 20 *ibid.* 328 (June, 1931).

this office all buyers, including sinking funds, could come for information essential to economical planning of borrowing. Its direction could be counted upon to be expert in note and bond market conditions and to be able to realize great economies in interest for the municipalities."¹⁸

The use of advice, information, and assistance is probably the least distasteful, to cities, of any methods of state control and will result in a greater degree of cooperation on their part; consequently it will in many cases be more successful and effective than the mandatory or prohibitive methods of control, under which a state board is given the power to tell a city that it must or must not take certain action. Educational methods, the offering of a helping hand to city officials who sincerely desire to make good in their work, may be more effective in improving municipal administration than mandatory orders handed down from the state capital. As stated by a committee of the American Municipal Association in its report on financial relationships between state governments and municipalities: "Attempt to legislate municipal 'goodness' by a financial 'eighteenth amendment' have uniformly met with failure. . . . More lasting results can be obtained through educational methods than through any attempt to use the method of benevolent despotism."¹⁹ This same principle applies to fields other than finance. Human nature being what it is, city officials resent the dictation of a state board with mandatory powers. If the board's program has real merits and will be effective in improving local administration, it need not be forced on local governments. In most cases it can be sold on its merits; in the remaining cases, little is to be gained by a sale forced on an unwilling buyer by a legislative act. Perfunctory compliance with the state order or demand may be secured but in most cases it will be of little value.

GRANTS-IN-AID

A grant-in-aid is a conditional contribution made by the central government to a unit of local government to aid in the performance

¹⁸ *Report No. 2 of Commission to Investigate County and Municipal Taxation and Expenditures in New Jersey, 1931, p. 124.*

¹⁹ *Financial Relationships Between State Governments and Municipalities, preliminary report by a committee of the American Municipal Association.*

of some function.²⁰ The grant may be conditional on a certain action of the local unit, usually that the service rendered be done with a stipulated degree of efficiency. In other cases the law provides that these grants shall be paid under any and all conditions. Such grants-in-aid are made in England by the Ministry of Health for the work of local governments in connection with venereal disease, tuberculosis, and maternity and child welfare. This device is also used in England for improving the standards of local police administration. The Home Office, which has supervision of police, grants the local authorities a sum not exceeding one-half the total cost of the pay and clothing of the force if the inspectors of constabulary find that the force measures up to the required standards. Grants-in-aid for education are made under the supervision of the Board of Education.

While grants-in-aid have been rather fully developed in the field of federal-state relations, especially for highway construction, until recently they have had only limited use in city-state relations. In cases where grants are made to encourage the establishment of a service, only limited discretion is given to administrative authorities. Where certain standards of efficiency are required, however, the degree of discretion granted the administrative authorities is greater.

Grants-in-aid are more common for education than for any other field of local activity. The grant of the money, or the amount, is conditional in many cases on local standards of efficiency and has thus been effectively used to raise the general level of educational attainments. Such grants have been used to improve the personnel of the teaching staff and to develop new courses, such as agriculture and industrial training. Frequently an equalization grant formula is used to provide aid in accordance with local needs. Local governments are required to fix a certain tax rate for school purposes, and state aid is given to provide a minimum program which the local levy will not support.

Provision has also been made in some states for grants-in-aid for the maintenance of both school and public libraries. For school libraries the condition usually imposed is that the locality raise a specified sum of money, that it select its books from an approved list, or that it conduct its library in a manner prescribed by the

²⁰ On the grant-in-aid as a source of municipal revenue, see chap. xxix.

state authority. Connecticut and Washington have provided a system of grants-in-aid for localities that establish public libraries which meet the standards set by the state library commission.

Grants-in-aid for health work are made in several states. Massachusetts, California, and Washington use this device to encourage cities to establish and operate hospitals for treating tubercular cases. New York, Massachusetts, Indiana, Wisconsin, and Alabama give such grants for the maintenance of venereal disease clinics. Grants-in-aid for the construction of highways and streets are provided in several states.

An interesting provision is found in the laws of North Dakota for grants-in-aid for the maintenance of fire departments. Provision is made for the state treasurer to pay cities an amount equal to 2 per cent of the premiums received on fire insurance policies issued on property in the city. To qualify for this state aid, the city's fire department must have been in existence for eight months, and during this period it must have had at least 15 members, and equipment of at least one steam, hand, or fire engine, hook and ladder truck, or hose cart. The minimum requirements provided in the statute before a city can receive any benefits indicate a method by which the state may raise the standards of fire departments.

Grants-in-aid for public welfare developed during the depression following 1929. Although the care of the poor had been looked upon as a responsibility of local governments, during the depression the burden became such that they could not carry it without help. The states, assisted by the federal government, stepped into the picture and granted aid to the local governments. Relief continued as a local responsibility primarily, state aid being granted because of local inability to raise the necessary funds. The methods used to distribute to the local governments the money appropriated by the states for relief varied.

(Grants-in-aid offer a fertile field for the development of administrative supervision over cities. If a city does not reach the standard of efficiency required by law or by the state administrative board, no grant will be received. Since the fund is contributed in part by all cities, this means that a city which does not maintain satisfactory standards of service is penalized by paying into this fund money that is distributed to other cities in which the service is satisfactory.

This should serve as an effective incentive to local officials to maintain the service at a standard which will qualify for the grant-in-aid.)

Through the use of conditional grants-in-aid, the states have indirectly encroached upon the field which was formerly considered to be reserved to local governments. They have encouraged the undertaking of new functions, and determined the way in which old functions shall be performed, especially as to the minimum standards of service. Withholding grants until the local personnel engaged in the function are approved by the state, and requiring certain practices and procedures in the expenditure of the funds offer further opportunities for state control. The local government continues to administer, but in many cases under rather rigid state supervision and control. The situation has been referred to as synthetic home rule.²¹

APPROVAL AND REVIEW OF LOCAL ACTION

Approval and review are two similar devices for state supervision and control. In the case of approval, no action has been taken by local authorities. It is the proposed action that is subject to state approval. In the case of review, however, an action has already been taken, or is in the process of being taken by the city.

The use of approval as a means of administrative control and supervision over local government may be illustrated by municipal debt administration. Constitutional and statutory debt limitations are too rigid and arbitrary.²² They fail to adjust themselves to the varying needs of local conditions. A distinction should be made between a debt incurred for a public utility which will be met by revenues from the undertaking, and a debt for parks which must be paid from general taxation. In determining whether a debt should be incurred, much depends upon the financial administration in the particular city. As Professor Fairlie says, "To decide whether additional debt may be safely incurred can be determined wisely only after a careful examination of a complex financial situation, involving

²¹ Virgil Sheppard, "The Middle Way—American Plan," 29 *Nat. Mun. Rev.* 296 (May, 1940).

²² On the methods of limiting municipal indebtedness, see chap. xxx.

a study, not merely of the aggregate amount of existing debt, but also of the provisions for meeting this debt and of the resources of the local government concerned."²³ These factors cannot be considered where municipal indebtedness is limited by constitutional or statutory provision.

Actual experience has demonstrated that arbitrarily limiting the quantity or amount of municipal indebtedness will not safeguard the quality of indebtedness.²⁴ The inability of many cities to meet the interest and principal payments on their indebtedness during the economic depression of the 1930's indicated that the present methods of debt control are not entirely successful.²⁵ The present methods of limiting municipal indebtedness have proved to be ineffective in furnishing protection to the taxpayer against the incurring of unwise debts, and they have proved to be unscientific in that they cannot be adjusted to the particular needs of local circumstances.

State administrative control over municipal indebtedness is now found in several states.²⁶ The states which have gone furthest in this direction are Indiana, New Jersey, and North Carolina. The methods of control used in Indiana and North Carolina will be discussed as illustrative of this type of supervision.

State administrative supervision over local indebtedness was first provided in Indiana in 1919. In answer to the cities' opposition to the law, it was repealed in 1920. Administrative supervision was reestablished, however, in 1921, and the plan is still in use. The 1921 act provides that public notice of any plan to incur municipal

²³ J. A. Fairlie, "State Supervision of Local Finance," 1 *Proceedings of American Political Science Association* 151 (1904).

²⁴ See, for example, Report No. 1 of the *Commission to Investigate County and Municipal Taxation and Expenditures in New Jersey*, chap. vi.

²⁵ E. Blythe Stason, "State Administrative Supervision of Municipal Indebtedness," 30 *Mich. Law Rev.* 833 (Apr., 1932).

²⁶ See Wylie Kilpatrick, *State Administrative Review of Local Budget Making*, 1927; Wylie Kilpatrick, "Tax Control; Is the Indiana Plan the Way Out?" 8 *New Jersey Municipalities* 22 (Dec., 1931); Edwin O. Stene, *State Supervision of Local Finance in Minnesota*, Publication No. 30, League of Minnesota Municipalities; Philip Zoercher, *The Indiana Plan of Controlling Expenditures* (pamphlet), 1931; Wylie Kilpatrick, "State Administrative Supervision of Local Financial Processes," *Municipal Year Book*, 1936, p. 340; Clyde F. Snider, *The Problem of Local Fiscal Control*, Publication No. 29, Illinois Legislative Council, August, 1940; Wylie Kilpatrick, *State Supervision of Local Budgeting*, 1939.

indebtedness in excess of \$5000 must be published for two weeks in two leading newspapers of the taxing district. If ten or more taxpayers in the district file in the office of the county auditor a petition objecting to the proposed indebtedness and stating facts which tend to show that it is "unnecessary, unwise or excessive," the question is brought before the State Board of Tax Commissioners. The act gives the board final power to pass upon the amount of indebtedness to be incurred. No standard is provided to govern the board; it is given discretionary power to pass upon the expediency of the proposed issue. Local tax levies in Indiana are also subject to state review upon petition by ten taxpayers in the unit concerned, the State Board of Tax Commissioners having the power to affirm or decrease the proposed levy on any item. That taxpayers in Indiana have made use of their privilege of appealing bond issues and tax levies is shown by the fact that 1230 local levies were appealed during a period of eleven years following the enactment of the law. Reductions were made in 638 cases, the total amount of such reductions exceeding \$21,000,000. Local bond issues in the amount of \$73,000,000 were reviewed on appeal in the same period, with over \$30,000,000 being disapproved.²⁷

A very complete and comprehensive plan for state supervision of local finance is provided in the North Carolina Local Government Act of 1931. The act created a Local Government Commission consisting of nine members. Six members are appointed by the governor and hold office at his pleasure; the state auditor, state treasurer, and commissioner of revenue are ex officio members. The Director of Local Government, one of the appointive members, is the only salaried member of the commission, the others being on a per diem basis. The act applies to all political subdivisions of the state.

The act provides that no bonds or notes may be issued by any local unit until the issue has been approved by the Local Government Commission. In determining whether a proposed bond issue shall be approved, the act provides that the commission may consider the necessity of any improvement to be made with the proceeds of

²⁷ Philip Zoercher, *op. cit.*, note 32. For an unfavorable view of the "Indiana Plan," see C. R. Dortch, "The Indiana Plan in Action," 27 *Nat. Mun. Rev.* 525 (Nov., 1938).

it; the amount of indebtedness outstanding; whether sinking funds for existing debts have been adequately maintained; the percentage of collections of taxes for the preceding fiscal year; and many other factors which are specified in the law. If the proposed issue is to establish or enlarge a revenue-producing utility, the commission must take into consideration the probable earnings of the improvement and the extent to which they will be sufficient to pay the interest and principal. Finally, regardless of the purpose for which the money is being borrowed, "The Commission shall also consider the adequacy or inadequacy of the amount of the proposed issue for the accomplishment of the purpose for which the obligations are to be issued, and whether such amount is excessive. The Commission shall have authority to inquire into and give consideration to any other matters which it may believe to have a bearing on the question presented." The commission may refuse to approve the proposed issuance only after a hearing, and such determination may be overridden by a majority vote in the local unit. James W. Fesler has pointed out that between 1932 and 1940 there was a reduction of 15½ per cent in local bonded indebtedness in North Carolina, but he cautiously points out that there is no scientific way to determine whether the plan for state control was the determining factor. "About all that can safely be said," he states, "is that there has been no general criticism of the commission's use of this power."²⁸ In only one case up to 1941 had the commission's disapproval of a bond issue been overruled by popular vote in the local unit. State supervision in North Carolina is not limited to indebtedness but extends to other phases of municipal finance. Indebtedness, however, illustrates the system of state control in that state.

State review or approval, as has been noted above, is mandatory in North Carolina; in Indiana it is used only when ten or more taxpayers petition and request action by the state agency. Local budgets in Iowa are subject to state review upon petition by local taxpayers; and in New Jersey and New Mexico budgets must as a matter of course be submitted to a state agency for examination and approval. Approval of a local budget in New Jersey can be with-

²⁸ James W. Fesler, *op. cit.* On the work of the Local Government Commission in North Carolina, see also B. U. Ratchford, "The Work of the North Carolina Local Government Commission," 25 *Nat. Mun. Rev.* 323 (June, 1936).

held only if it is found not to meet all the legal requirements, but in New Mexico the State Tax Commission may increase or decrease appropriations and tax levies.²⁹ Permitting the review of local bond issues or expenditures on their merits—deciding whether as a matter of policy it is wise to take the proposed action—is, of course, quite different in principle from review only as to legality. And it is state review of local policies—passing upon the wisdom of local action—that is especially distasteful to local officials.

Administrative supervision over local finance has been objected to on the ground that it violates the principle of municipal home rule. While it does invade the local field, and to that extent violates the principle of local control, the significant question is whether it will improve the administration of local finance. The defaults of weak and less well-managed units of government in a state react unfavorably upon the bond issues of other cities in the state. Stronger cities and those in a better and more satisfactory financial situation are forced to pay higher interest rates because the public feels less confident about such investments. Some degree of state control may help to protect the credit of the local units. Administrative supervision should provide a more suitable means of control than arbitrary constitutional or statutory limits.

State administrative supervision over municipally owned utilities illustrates the use and possible value of approval and review of local action. Several states now give their public utilities commission jurisdiction over such utilities. This supervision has aided cities in working out a sound rate structure and improving their methods of accounting, and, through the certificate of convenience and necessity, has prevented them from undertaking projects which were economically unsound. The New York Public Service Commission, in refusing to grant a certificate to a village for the construction of a publicly owned electric plant, said: "The Commission is therefore called on to protect the village against itself. Public convenience and necessity do not require a village to embark on a disastrous business enterprise."³⁰ Theoretically, a state commission with its varied experience should be able to give sound advice to cities

²⁹ Clyde F. Snider, *op. cit.*

³⁰ *Reports of Decisions of Public Service Commission*, 2nd District, New York, 1919, p. 372.

in such cases. Whether political considerations outweigh this advantage of the state commission is another question.

The mechanism of approval is also used in other fields of municipal administration, especially health and education. Approval by state authority is required in some states for local health officers. In New Jersey examinations are held by state authority to determine the fitness of candidates for this position. A similar plan is used in Illinois for county superintendents of highways. Appointments may be made only from the list of those who pass the examinations. The state examination and certification of teachers, which is now used in over 40 states, is also an application of the principle of state approval by administrative action.

An illustration of state administrative review of local action is that of state tax commissions or boards of equalization in passing upon local assessments, reviewing and equalizing the assessment as between classes of property and between individuals. This device is also used in several states as a means of supervising health administration, the central authorities having power to review and pass upon local quarantine regulations and health ordinances. The removal or suspension of teachers by local authorities is subject to central review in several states. Rather extensive use is thus being made of state administrative review of local action.

ORDERS AND ORDINANCES

The English system of using orders issued by government departments acting under authority of Parliament illustrates the use of orders and ordinances as a method of control by an administrative board. Some of these become effective on issue; but others, known as provisional orders, do not become effective until approved by Parliament. The provisional orders issued during the year are consolidated into a few measures and submitted to Parliament for approval. The acts are known as Provisional Order Confirmation Acts. Such orders are issued by the Ministry of Health, the Board of Trade, the Ministry of Transport, the Home Office, the Board of Education, the Board of Agriculture, and other central departments in their respective spheres of activity.

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Professor Munro has pointed out the value of this system as follows:

The system of orders and provisional orders renders a great service in relieving Parliament from the task of considering a large grist of minor and local questions. It creates a strong presumption in favor of having these things settled by the administrative experts, not by politicians. American state legislatures sometimes spend a whole day debating whether the boundaries of a city shall be slightly enlarged, whether the ward lines shall be changed, whether some city may borrow money for a new park, or whether some city street may be widened. It has been estimated that the Massachusetts legislature, for example, spends at least one-fourth of its time in the discussion of matters which, under the English system, would be covered by provisional orders and confirmed without any parliamentary discussion at all.³¹

He goes on to point out, however, that the system would not work equally satisfactorily in the United States. The system is based upon the principle that the administrative agencies issuing the orders will always have the confidence of the legislative body. Under the cabinet system of government in England, the ministry, which in this case means the administrative departments, enjoys that confidence at all times. With the different relationship between the legislative and the executive and administrative branches in our states, the system would not work so satisfactorily. In the first place, the legislature would be unwilling to give administrative departments power to enact sublegislation subject to its approval. And if the power were given, there would be no assurance of approval.³² Political considerations would in many cases have as much to do with the question of approval by the legislature as would the merits of the findings of the administrative experts.

Some attempts to approach the English system of orders have been made in this country. Through the issuance of orders and ordinances, certain state administrative authorities now exercise some supervision and control over local government. Orders and ordinances differ in that the former apply only to the specific case

³¹ W. B. Munro, *The Government of European Cities*, p. 42. By permission of The Macmillan Company, Publishers.

³² The constitutional problem as to the delegation of legislative power might also arise.

involved. Ordinances, on the other hand, establish general rules of conduct for municipal officials to follow. The ordinance-making power is thus in a sense an exercise of legislative power by administrative authorities.

General power to issue rules which have the force of law has been granted most often to state authorities in connection with finance, education, and health. Illustrative of the ordinance-making power granted to administrative authorities is the Illinois statute which gives the tax commission power "to prescribe rules and regulations for local assessment officers relative to the assessment of property for taxation, which general rules and regulations shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction."³³

The issuance of orders by administrative authorities is widely used in the fields of education and health. The following order, issued by the Idaho State Board of Health some years ago as a result of the investigation of a local water supply system which was unsatisfactory, illustrates the use of the power to issue orders as a means of control over local government.

Now, therefore, be it resolved by the State Board of Health in special session convened that the City Council of Idaho Falls be requested to either install a temporary pump in the Snake River near the bridge; which shall be connected with the water mains at that point, from which to furnish the people with a pure water supply, or else syphon Willow Creek where it empties into the city canal, so that it will no longer endanger the health of that community; that thirty days shall be permitted in which this work shall be commenced, and thereafter completed with all possible dispatch.

Be it further resolved that State Sanitary Inspector James J. Wallis be instructed to see that the order of this Board is carried out; and that he be given discretionary power, so that if the permanent wells, to be sunk by said city from which they intend to get their future water supply can be installed, and thus avoid either the sinking of the temporary pump or the syphoning of Willow Creek, that it be allowed with the understanding, however, that in either event within thirty days bona fide work shall commence on one of the methods indicated in these resolutions.³⁴

³³ *Smith-Hurd Illinois Revised Statutes*, 1933, chap. cxx, sec. 339.

³⁴ *Idaho State Board of Health Report*, 1912, p. 8, quoted in Schuyler C. Wallace, *op. cit.*, p. 130.

Orders and ordinances might be considered the culmination of all the methods of control previously discussed. As a result of the findings and the experience of central authorities in the use of the other mechanisms, orders are issued to remedy particular situations; ordinances, on the other hand, are issued to guide the future conduct of local officials, and thus to attempt to prevent a recurrence of the difficulty.

Attempts to regulate municipal affairs by general legislative act have proved unsatisfactory. If general in their nature, such acts are not flexible enough to meet the needs of the particular local situation. This difficulty has been met in some states by the use of special legislation. This has not only proved to be costly and inefficient but has led to abuses.³⁵ Many such bills are passed on the recommendation of the legislator from the district in which the city lies, rather than on their own merits. The issuance of orders and ordinances by administrative boards offers a possible means of improvement.

APPOINTMENT AND REMOVAL

State control over local government personnel by exercising the appointment and removal power has not been developed to a great degree. The purpose of such control is to provide more efficient personnel for the administration of the functions entrusted to local authorities. This control can be justified most easily in those fields in which the city or other local unit is acting primarily as an agent of the state.

A fairly extensive degree of control over local finance officers is provided in several states. This is usually exercised by state tax commissions, and in some cases applies to officers who, while not strictly municipal, perform services which bear directly upon the problem of city government. Assessing officials and boards of review are officers of this latter type. In South Carolina, where the valuation and assessment of property for taxation are done by township boards of assessors and by special boards of assessors for towns and cities, appointment of such boards is vested in the governor. The appointments are made for a two-year term on the recommendation

³⁵ See A. C. Hanford, *Problems in Municipal Government*, pp. 9-13.

of a majority of the members of the general assembly from the county. The governor also appoints the county auditor, who is the chief supervising assessment officer for the county. Some state control over the appointment of local assessing officers is also provided in Maryland, Delaware, West Virginia, and Louisiana. A limited power to remove local assessing officers is provided in a few states.³⁶

Minnesota has also given to state authorities an extensive grant of power over local finance officers. The governor of that state is given the power to suspend or remove from office any official charged with financial duties if it appears to him that the officer has been guilty of delinquency in the performance of his duties.

State-appointed commissions have been created for certain cities with powers of supervision and control over their finances. The governor of Massachusetts appoints a finance commission whose duty it is to investigate the methods of financial administration of Boston and of Suffolk County. Reports are made to the mayor, the city council, the governor, and the legislature.³⁷ The governor of Oregon appoints the Tax Supervision and Conservation Commission of Multnomah County (Portland). This board has jurisdiction over the city of Portland and certain other governments in the Portland metropolitan region. It has power to strike from local budgets any items not authorized by law, and to order the reduction of any proposed tax levies which it finds in excess of constitutional or statutory limitations. The board also advises the local governments on matters of financial policy.³⁸

Fairly extensive power of central control over local health officers is also provided in several states. Among the powers which have been conferred most often upon state boards of health is the power to remove any local health officer who fails to perform the duties of his office satisfactorily. In a few states limited power of appointing local health officers has been vested in the state authorities.

State appointment of the personnel for local school administration has been developed to only a limited extent. The removal power, however, has been more widely provided. This is usually accom-

³⁶ National Association of Assessing Officers, *Assessment Organization and Personnel* (1941), p. 164.

³⁷ A. E. Buck, *Municipal Finance*, p. 14.

³⁸ Clyde F. Snider, "Fiscal Control at the County Level," 30 *Nat. Mun. Rev.* 579 (Oct., 1941).

plished by giving state authorities power to revoke licenses, which has the effect of rendering it impossible for a teacher to continue his work. The power granted to state boards in some states is broad and extensive, as when "any certificate or diploma may be revoked by the board for sufficient cause." In other states the board is limited to revocation for specific causes, as when the person is guilty of "incompetency or immoral conduct."

Control over the personnel of local police is provided in nine states. Some states have given the governor or other state authority power to appoint the chief of police or the police board. While in no state does this power extend to all cities, it has been given to the governor relative to certain cities in Alabama, Maine, Maryland, Massachusetts, Missouri, New Hampshire, and Rhode Island. In New York and South Dakota state supervision and control over the personnel of police departments is limited to removal.³⁹

Control over the personnel of local civil service commissions is granted in New York and Ohio. If the local authorities fail to appoint such a commission in New York, or if they fail to fill a vacancy in Ohio, power of appointment is vested in the state civil service commission. In New York the grant of power over personnel is more extensive. If a municipal civil service commission proves to be incompetent or neglectful of duty, the state commission may, by unanimous vote and with the approval of the governor, remove the commissioner. In case of such removal the vacancy is filled by the state commission.

There have been a few cases in which mayors have been removed by the governor. The governor of Ohio, by the municipal code of 1902, was given the power to remove mayors in case of misconduct in office, bribery, gross neglect of duty, gross immorality, or habitual drunkenness. There had been only three cases of removal under this power up to the time Governor Donahey took office in 1922.⁴⁰ More

³⁹ M. H. Satterfield, "State Appointment and Removal of Local Law Enforcement Officers," 12 *Southwestern Social Science Quar.* 277 (Mar., 1932); Charles M. Kneier, "Some Legal Aspects of the Governor's Power to Remove Local Officers," 17 *Virginia Law Rev.* 355 (Feb., 1931); Walter Matscheck, "The Police Budget Controversy in Kansas City," 12 *Pub. Management* 579 (Dec., 1930); Schuyler C. Wallace, *op. cit.*, pp. 201-203; 13 *Pub. Management* 213 (June, 1931); *American Year Book*, 1932, p. 147.

⁴⁰ W. H. Edwards, "Governor Donahey and the Ohio Mayors," 13 *Nat. Mun. Rev.* 350 (June, 1924).

vigorous use of this power was made during his administration. Power to remove mayors is also given to the governor in Michigan and North Dakota; in the latter state this action is subject to appeal to the courts.

The charter of New York City gives the governor of the state power to remove the mayor and the borough presidents. Under a similar provision in an earlier charter of the city the presidents of the Boroughs of Manhattan and the Bronx were removed by Governor Hughes, and the president of the Borough of Queens was removed by Governor Dix. Mayor Walker of New York City resigned from office in 1932 during a hearing before Governor Roosevelt on the question of his removal.

SUBSTITUTE ADMINISTRATION

Provision is made in some states that central authorities may take over the administration of a municipal service when the city fails to administer it in a satisfactory manner. The aim here seems to be supervision and control. While all power is taken from the local authorities, it is the intent that this be only temporary. Undoubtedly, the possibility of the state stepping in and taking charge of a function acts as an effective incentive to more efficient action on the part of local authorities.

Substitute administration should be distinguished from state assumption, on a permanent basis, of functions formerly performed by local governments. In some states, as a matter of deliberate public policy, functions formerly entrusted to local governments have been transferred to the state. Highway administration in North Carolina and Virginia, and school administration in Delaware and North Carolina have become state responsibilities. The change is the result of a belief that these functions can be performed more satisfactorily by centralizing responsibility and control in the state. The permanent nature of direct state administration in these cases distinguishes it from substitute administration, which is temporary only.

The mechanism of substitute administration is used most widely in the field of health. Several states authorize the central health authorities to take over the conduct of local health activities in case

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a local board fails to enforce the regulations of the state department or to handle the administration of the local office efficiently. Although the personnel of the state department are used, the cost becomes an obligation of the local community. Such action may be taken in several states in case of epidemics, even though there is no evidence of negligence or inefficiency on the part of the local authorities.⁴¹

State receiverships for municipalities defaulting on their bonds provides another illustration of substitute administration.⁴² A state agency is given the power to take over the administration of the finances of a defaulting city and to exercise it until the city is again in a sound financial condition. Substitute financial administration is one of the more drastic methods of interference in municipal affairs on the part of a state administrative agency.

CONCLUSIONS

In the preceding pages an effort has been made to present a picture of the present use of administrative control over municipal government. The possibilities for the further use of this device have also been pointed out. The advantages of the particular methods of control have been considered in the discussion of the respective devices. The question now arises as to the advantages and disadvantages of administrative control in general.

One of the main arguments offered against state administrative control is that it is a violation of the home-rule principle. Opponents of the plan believe that it will unduly interfere with the rights of the cities to govern themselves. The answer made to this objection is that administrative control conflicts with home rule only when the latter is overemphasized or exaggerated. Rather would administrative control look to cooperative home rule, seeking to "preserve the useful features of local independence, and also to assure the citizens that a certain minimum standard is being observed by their local officials." In emphasizing this aspect of administrative control, the report of the Commission to Investigate County and Municipal

⁴¹ See Schuyler C. Wallace, *op. cit.*, pp. 118-119, for the situation as it existed in 1928.

⁴² See chap. xxx for further consideration of the state receivership.

Taxation and Expenditures in New Jersey said: "The idea of inspection and criticism by an external, higher authority is not inherently inimical to a vigorous local administration, as has been demonstrated by the comparative success of the educational system."⁴³

Those who advocate administrative control also defend it insofar as it conflicts with or violates what they refer to as overemphasized home rule. They take the view that administrative control will not deprive the people of any reasonable and proper determination of their local affairs. Frank J. Goodnow, in favoring administrative control of local government, stated that "uncontrolled local administration of general matters both leads to great lack of administrative uniformity and harmony where uniformity and harmony of treatment is necessary, and is slovenly and inefficient."⁴⁴ According to the New Jersey report referred to above: "It is perfectly apparent that the fruits of an extreme home rule policy have been the development of inefficient types of local government, the failure often to observe ordinary prudence and business judgment in the administration of local affairs, and creation of an unnecessarily expensive scheme of local government."⁴⁵ The question thus arises as to whether it is not possible to have administrative control without violating the principle of home rule, except in this exaggerated form. Administrative supervision does not aim to interfere with or control the local formulation of policy, but rather seeks to secure a better execution of that policy once it has been adopted. It seems that this does not necessarily conflict with the real objectives of the home-rule movement.⁴⁶

The objective of state supervision should be to secure efficiency and economy in municipal government. Critics of state supervision hold that this can best be secured by improvement in the "design of

⁴³ *Report No. 1 of the Commission to Investigate County and Municipal Taxation and Expenditures in New Jersey*, p. 238. For a criticism of central control in England as stifling local initiative, see W. A. Robson, *The Development of Local Government*, part ii; E. S. Griffith, *Modern Development of City Government*, vol. 2, pp. 580 ff.

⁴⁴ F. J. Goodnow, *op. cit.*

⁴⁵ *Report No. 1 of the Commission to Investigate County and Municipal Taxation and Expenditures*, p. 202.

⁴⁶ *An Improved Procedure for Investigating Municipal Affairs*, published by the City Club of New York, Jan., 1932.

administrative organization and the exercise of adequate power within that design." They point to changes in form and structure, such as the city-manager form of government, as doing more to improve efficiency and economy than state supervision. They go on to say that such progress as has been made in this direction has come about without any great assistance from state authorities, either legislative or administrative. Rather than the states leading in the field of administrative organization, it is held that "those which have made any have followed quite generally in the wake of municipal progress."⁴⁷ And, say the critics of state supervision, not only will it be of no value in improving municipal administrative practices, but it may be detrimental. This view has been stated effectively in a report by a committee of the American Municipal Association on financial relationships between state governments and municipalities, as follows:

There are few instances where marked improvements in municipal financial practice originated at a state capitol. For instance, the budget system made considerable headway among municipalities before the states began to adopt budget plans. Centralized purchasing was adopted by cities as early as by states. The accounting practices of our cities compare very favorably with those of the states. Cities have made considerably greater progress in reporting their activities to their citizens, both financial and otherwise, than have the states. There is great danger that state control might restrain forward-looking municipal officials from initiating and installing further improved methods consistent with good administration.⁴⁸

On the basis of the record, the case for state supervision and control over municipalities is weak. There is little that most cities in a state can learn about good public administration at the state capital. Advocates of state supervision apparently do not rely upon the principle of teaching by example.

The merits of administrative control in actual practice will depend in large part upon the personnel of the state administrative

⁴⁷ C. A. Dykstra, "Home Rule for Cities and Villages," 27 *The Municipality* (Wisconsin) 98 (June, 1932). Also see Lane Lancaster, "State Supervision and Local Administrative Standards," 13 *Southwestern Social Science Quar.* 321 (Mar., 1933); F. N. MacMillin, "Cities Can Govern Themselves," 15 *Pub. Management* 129 (May, 1933).

⁴⁸ *Financial Relationships Between State Governments and Municipalities.*

board. Those opposed to administrative control point to state boards, such as public utilities commissions, where political considerations have often been important in the determination of their personnel. They feel that such a commission would merely be more spoils for the party, and aid in the building up of a political organization in the state. Because of the type of men on the commission, they believe that the advantages of administrative control are only theoretical and that in actual practice they would not materialize. Shifts in the political control of the state government will bring a turnover in the personnel of state supervisory agencies, with resulting changes in policies.

Opponents of state administrative control believe that the result will be a case of supervision by less competent personnel than those supervised. C. A. Dykstra, former City Manager of Cincinnati, in discussing state supervision, has expressed this view as follows:

May we expect state supervision to increase the competency of existing city personnel and to raise the quality of recruits who seek to serve in local administrative positions? We have no good reason to be of such an opinion. As a matter of fact, if we lodge state supervision in the hands of our existing state officials, we would have every reason to expect that our local authority would be used to further their state political ambitions. It cannot be said that the personnel of our state governments is notably superior to that which we find in local governments. In fact, it is generally less well paid and less thoroughly trained than any local personnel which has comparable responsibility. Furthermore, it is less permanent and less interested in the subject matter of its duties. Should we create a special state officer for local supervision, we have no reason within our experience with state supervisory bodies or, for instance, with state superintendents of education, to expect the matter will be greatly different or that direction given from the state capitol will come from more competent minds than those who will be directed.⁴⁹

This objection is made to the application of administrative control rather than to the principle itself. Nevertheless, it is the actual administration that counts; and unless the personnel of the central agency is of a satisfactory type, the advantages of administrative control are limited.

Advocates of administrative control point to state boards and

⁴⁹ C. A. Dykstra, *op. cit.*

commissions in which political considerations have not been so important in the determination of personnel. State boards of health and state boards of education have been generally free from partisan politics. The advocates of administrative control suggest that the same standards may be maintained in the personnel of administrative agencies having supervision and control over local government. Certainly the success of administrative control will depend in large part upon the personnel of the supervisory agency.

Much of the opposition to state administrative control centers around "the right of the people to govern themselves," an abandonment of "the principles upon which our institutions are founded," and an "admission of the failure of democratic government." State supervision and control is not, as its opponents allege, a confession that democratic government has not worked and will not work at the local level. The fundamental question in evaluating state supervision is whether it will result in a more satisfactory administration of public affairs, giving proper consideration to both state and local interests. It does not mean that local self-government has failed; rather it means that in meeting their complex problems, cities need the assistance, the guidance, and the control which can be given by state administrative agencies.

The tendency toward state control is viewed with alarm by those who believe in local control of local affairs, but as one writer has recently pointed out, "Sentiment alone does not preserve democracy." If the local governments can demonstrate their capacity to administer their affairs in a satisfactory manner, this will do more to stem the state centralization tide than appeals to save democracy and preserve the right of self-government. "The final supremacy of centralization over home rule or home rule over centralization," says a recent writer, "will be founded upon the basis of the demonstrable capacity or incapacity of each public jurisdiction to do well the task assigned to it."⁵⁰

⁵⁰ Virgil Sheppard, *op. cit.*

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Relation of the National Government and Cities

In a federal system of government such as we have in the United States, governmental power is divided and distributed by the Constitution between the central government and the governments of the component states or subdivisions (in the United States, the states). This territorial division of powers by constitutional provision is one of the things which distinguishes the federal from the unitary system of government. The powers of government in a federal systems are distributed in this way on the principle that affairs which are of common interest to the country as a whole should be placed under the control of the central government, and that matters not of this nature, but which lend themselves to diversity of treatment, should be placed under the control of the component units (states).

This is the principle upon which the framers of the federal Constitution divided the powers of government between the national government and the states. As the government of cities was considered to be a matter of local rather than of common concern, it was left under the control of the states. Thus, under the territorial distribution of powers made in the Constitution, the power to create and to provide for the government of cities is under the control of the states, not being enumerated as one of the powers delegated to the national government. Even though there is no mention of municipalities in the Constitution, and no grant of power to create or provide for the government of cities, this does not mean that in the exercise of its specifically granted powers the national government may not act in a way to be of interest to cities. The national govern-

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ment has not invaded the local field but rather has performed its own functions in a way to affect municipal problems. In the performance of some of its functions, however, the national government comes into official relations with city governments, as when it contracts with a city to furnish water service to a nearby army camp.

Congress in its legislation affecting cities must conform to the division of power provided in the Constitution; if, as some allege, there has been encroachment upon the local field by the national government, it has been a constitutional invasion or encroachment. It is the exercise of its constitutional powers, either express or implied, that brings the national government into various relationships with cities.¹ It is the purpose of the present chapter to discuss some of the more important of these relationships. The number of relationships is great—so great in fact that not all of them can be discussed in a single chapter.

The development of federal activities which are of interest to and affect cities has been largely recent. This is forcibly illustrated by a comparison of a letter from Secretary of Commerce and Labor Nagel, written in 1912 in response to a request from the *American City* for a statement concerning the relations of his department with cities, with a letter from Secretary of Commerce Hoover replying to a similar request in 1927. Although the work and publications of the Census Bureau were about the only activities which Mr. Nagel could list in 1912 as of primary interest to cities, Mr. Hoover's statement in 1927 enumerating the activities of his department in this field indicated that it was approaching the status of a federal bureau of municipalities.²

In its special study of federal relations with urban governments, the National Resources Committee in its report in 1939 presented an excellent picture of the growth of national services that affect cities. This indicates that although the list of such federal activities referred to in the preceding paragraph was an understatement, the number was nevertheless small and the development has been comparatively recent. The evolution of national services for urban

¹ For further consideration of this question, see *Urban Government*, vol. 1 of the Supplementary Report of the Urbanism Committee to the National Resources Committee (1939), pp. 67-71.

² 6 *Am. City* 409 (Jan., 1912); 37 *ibid.* 575 (Nov., 1927).

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communities for the period 1789-1937 was summarized in the National Resources Committee Report as follows: (1) Up to 1850, 11 services; (2) 1851-1875, 4 new services added; (3) 1876-1900, 16 new services, making a total of 31 services at the end of the past century; (4) 1901-1910, 12 new services; (5) 1911-1920, 19 new services; (6) 1921-1930, 17 new services; (7) 1930-1937, 19 agencies which had been created earlier began rendering services to municipalities, and 22 new agencies were created whose work affected cities. The increase of new services continues, with few of the older ones being abandoned. The total of such services was 120 in 1937.

NATIONAL GOVERNMENT ACTIVITIES IN THE FIELD OF GENERAL GOVERNMENT

Several points of contact have developed between the national government and cities in the field of general government.³ Under general government come staff activities rather than line activities—services which are a means to an end rather than an end in themselves. The activities of the national government in this field are primarily the collection and dissemination of information and the giving of advice.

The Bureau of the Census collects and distributes much material which is of value to cities relative to their general governmental problems. Though the publication of general statistics dealing with population is of value to city officials, certain material pertaining especially to cities is now being collected. A special cities supplement to the *Statistical Abstract of the United States* presents many pertinent data for cities having over 25,000 inhabitants. *Financial Statistics of Cities*, a publication dealing until 1931 with cities of over 30,000 population, and since that time with those over 100,000, is published, according to the Bureau, "to provide information in

³ P. V. Better, *Federal Services to Municipal Governments*, Municipal Administration Service, Publication No. 24, 1931; P. V. Better, J. K. Williams, and S. L. Reeder, *Recent Federal-City Relations* (1936); *Urban Government*, pp. 55-178. The *Municipal Year Book* has a section on "Federal-City Relations" in which recent developments are reported. In the preparation of this chapter the author has also used John F. Miller, *Relations of Federal Administrative Departments with Municipalities*, Master's Thesis, 1930, University of Illinois Library.

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regard to the financial administration of the cities, in such form as to be comparable, with the hope that it may be of assistance to the officers who are charged with the responsibilities incident to the administration of local government and the betterment of the local communities; . . ." These reports show: (1) revenue receipts (total and per capita) by classes, (2) expenditures (total and per capita) by classes, (3) assessed valuation and total and per capita levies, (4) indebtedness (total and per capita), and (5) value of municipal properties. In 1945, *Governmental Finances in the United States; 1942*, and *City Finances; 1943* (Cities Having Populations over 25,000) were published. Volume 1 of *City Finances* each year is composed of individual city finance reports for cities of over 250,000 population.

Financial statistics for the smaller cities have been published as part of the decennial report of the Census Bureau entitled *Wealth, Public Debt and Taxation* (1932), and *Census of Governments* (1942). Special reports pertaining to particular phases or aspects of municipal finance have also been issued from time to time. Illustrative of this type of material is the bulletin issued in 1916 entitled *Comparative Financial Statistics of Cities Under Council and Commission Government, 1913 and 1915*. Several other special reports have been published.

The Bureau also publishes statistics on other than the financial phases of municipal administration, such as the publications on vital statistics of cities and those dealing with public utilities. The publication of the *State and Local Government Quarterly Employment Survey* (now *Government Employment*) began in 1940. In 1944, *Governmental Units in the United States* was published.

An extensive informational service on city planning, zoning, and building regulations has been developed by the Bureau of Standards in the Department of Commerce. Advisory committees made up of representatives of professional organizations have been set up to draft reports and give advice relative to these various fields. Among the publications which have been prepared and published on planning and zoning are:

1. *A Zoning Primer*
2. *A Standard State Zoning Enabling Act*

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3. *A City Planning Primer*
4. *A Standard City Planning Enabling Act*
5. *The Preparation of Zoning Ordinances*
6. *Zoning Progress in the United States*

Committees have also been established on building and plumbing codes. Several publications are available on these subjects.

Assistance has been extended to cities by the national government in meeting the problem of traffic regulation. The National Conference on Street and Highway Safety was organized in 1924, with the Secretary of Commerce as chairman, to investigate the increasing number of street and highway accidents. State and municipal delegates are sent to these conferences. A number of safety codes for streets and highways have been developed. Among the publications are a *Uniform Vehicle Code* and a *Model Municipal Traffic Ordinance*. The information contained in these reports should prove of great value to municipal officials in meeting this problem.

The purchasing of supplies is another municipal activity on which information has been provided by the national government and in which assistance may be secured by cities. Several cities make use of the *United States Government Master Specifications* in purchasing materials. Also available to cities is the *National Directory of Commodity Specifications*, which gives the best-known specifications for over 6000 commodities. Lists of manufacturers who are willing to certify that their products comply with federal specifications have been provided and distributed to purchasing agents of cities. These publications are of great value to cities, and several of the larger cities have established direct contact with the Bureau of Standards.

The Bureau of Standards also acts as a clearinghouse for information on the subject of weights and measures. At the request of city officials it advises them on questions which arise in connection with this problem. It cooperates in the preparation and enforcement of weights and measures ordinances, in the testing and calibration of standards for their use, and in the general administration of their ordinances on this subject. Annual conferences of weights and measures officials from states and cities are sponsored by the Bureau.

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In addition, the Bureau of Standards operates a testing laboratory in which tests are made for municipalities. Although this service is rendered to state governments without charge, municipalities must pay for the tests and analyses made. This phase of the Bureau's work has been summarized by Paul V. Betters as follows:

Tests of all kinds are made for municipal governments covering measures, electrical standards, instruments and materials, electric batteries, electric lamps and lighting equipment, length-measuring devices, weights and balances, scales, timepieces, volumetric apparatus, insulating materials, fire-resisting materials, fuels and lubricants, automotive equipment, engineering instruments and appliances, physical properties of engineering materials, sound-producing and measuring instruments, cement and concreting materials, meters of all types, and other items.⁴

The testing and investigation of structural materials as to availability, strength, and durability are of special value to cities in letting contracts for the construction of public buildings and in framing building codes.

The research and testing carried on by the Bureau of Standards in the field of public utilities have been valuable to cities. The standards it has worked out in the fields of electric, gas, and telephone service are particularly valuable to cities in granting franchises and in their other relations with public utilities that operate in their streets. The work in the field of electrolysis is illustrative of the type of assistance being rendered.

Electrolysis is of especial importance to municipalities when the current utilized by telephone trolley lines is grounded to the power plant and returns *via* gas and water pipes and cables and so corrodes them as to seriously hinder their operation or even destroy them completely. It has been an object of investigation by the Bureau for almost twenty years. Surveys have been made in various states to determine the conditions under which electrolysis occurs and the best methods for its prevention. Their results have enabled municipalities to make regulations in granting franchises which tend to mitigate the effects of electrolytic action.⁵

Assistance is also given by the national government to cities in selecting persons for municipal employment. The United States

⁴ P. V. Betters, *op. cit.*, p. 8.

⁵ John F. Miller, *op. cit.*, p. 31.

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Civil Service Commission has developed examinations for over 1700 different kinds and grades of positions. Many of these are adapted to municipal use; and a copy of any type of examination it has developed will be sent to municipal officials upon request. Rather wide use has been made of some of these tests by city authorities. A few years ago the International Association of Chiefs of Police requested the United States Civil Service Commission to prepare an adaptability test for policemen. The National Resources Committee in its report on *Urban Government* stated that in 1935 this test had been used by several municipal civil service commissions, including New York City. The advisory service rendered cities by the United States Civil Service Commission has been summarized as follows: "An increasing number of inquiries are received from municipal civil service commissions for advice concerning the selection of employees for the government and other services. Many sample tests for positions in the classified services are furnished to local commissioners. These range from clerical to firemen's examinations. The Commission also consults with municipal agencies relative to the methods of classification and occasionally furnishes information concerning civil service statutes."⁶

The national government has also recognized the desirability of in-service training for municipal employees. The Federal Bureau of Investigation admits selected state and local law enforcement officials to the National Police Academy which it conducts for its own G-men. The intention is that the persons trained in the Academy will return to their local communities and conduct schools for local officers. Up to 1945, over 1000 men had been graduated from the FBI National Academy and had in turn made this training available to 100,000 of their fellow officers. The FBI also has special agents qualified as police instructors who are available to cities in their police training programs. Assistance is given either in setting up programs to train new recruits or in establishing refresher courses for men already in the service. As J. Edgar Hoover said, "It is the desire of the FBI to raise the standards of law enforcement to the highest level and to this end any and all assistance will be given without cost to local departments."⁷ By the enactment of the

⁶ *Urban Government*, p. 86.

⁷ 27 *Pub. Management* 177 (June, 1945).

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George-Deen Act in 1936, Congress furnished a further incentive to in-service training on the part of state and local governments for this act made federal funds available to the states for this purpose.

The Hatch Act, which was passed by Congress in 1939 and amended in 1940, applies to state and local employees if their "principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any federal agency." Active participation in party politics or political campaigns is prohibited to non-policy-making state and local employees. It has been estimated that 300,000 state and local employees were covered by the amendment of 1940; the original act of 1939 applied only to federal employees.

Conferences at which problems of interest to cities are discussed have been held from time to time under the auspices of the national government. In some cases these have been composed of the public officials themselves, as was that of March, 1919, to which the President invited state governors and the mayors of all cities having more than 30,000 population.⁸ Various conferences held during the administration of President Hoover discussed problems of interest to cities, though the delegates were not public officials. The President's Conference on Home Building and Home Ownership, held in December, 1931, illustrates this type of activity. The Attorney General's conference on crime which was held in 1934 was attended by representatives of federal, state, and local governments, and was effective in securing the cooperation of all agencies and levels of government in the field of law enforcement. By such conferences the national government has aided in focusing attention upon and securing discussion of some of the problems facing cities.⁹

The Urbanism Committee of the National Resources Committee in its report of 1937 recommended that "a division of urban information should be created in the Bureau of the Census which would serve as a central repository and clearinghouse of all information about urban communities collected by all governmental agencies

⁸ 20 *Am. City* 211 (Mar., 1919). This was called by the President and the Secretary of Labor to discuss methods of meeting the unemployment problem.

⁹ The report of the President's Research Committee on Social Trends, entitled *Recent Social Trends in the United States* and published in 1933, contains much valuable material on certain phases of municipal government.

on all levels and by authoritative private agencies." Such an organization—the Municipal Reference Service—was established. Documentary materials from cities and from publications issued by municipal research agencies are collected. The collection includes charters, codes of ordinances, departmental organization charts, and civil service regulations. The Municipal Reference Service is not, however, an agency for the mere collection of documentary material, but "a vigorous, operating informational agency on state and municipal government."¹⁰ The suggestion made by William Anderson in 1925 that "the national government should make itself one of the principal agencies for providing municipal information, for educating local officials, and for promoting the improvement of local government processes"¹¹ was, in part at least, met in the establishment of the Municipal Reference Service in the Governments Division of the Bureau of the Census.

The studies of the National Resources Committee¹² and the resulting publications included much material of interest to city officials. The Urbanism Committee in 1937 issued a report entitled *Our Cities, Their Role in the National Economy*, and in 1939, a supplementary report, *Urban Government*. These reports attempted to indicate the future course of action not only in federal-local relations, but also in purely local fields.

With our entry into the Second World War in December, 1941, the national government assumed the duty of giving information and assistance to cities in meeting their new problems. Illustrative of this work are the bulletins issued by the Office of Civilian Defense on "Training Auxiliary Firemen," "Fire Protection in Civilian Defense," "Protection of Industrial Plants and Public Buildings," and "Air Raid Warning System." The assistance, however, was not limited to advice. Positive aid in the way of financial help was given to some cities where the impact of the defense program was especially great.

¹⁰ C. E. Rightor and L. H. Clickner, "A National Center of Urban Information," 21 *Pub. Management* 73 (Mar., 1939).

¹¹ W. Anderson, *American City Government*, pp. 76-77; W. Anderson, "The Federal Government and the Cities," 13 *Nat. Mun. Rev.* 288 (May, 1924).

¹² The name of this agency has been changed, the successive titles being National Planning Board, National Resources Board, National Resources Committee, National Resources Planning Board. The agency is no longer in existence, Congress having refused to make further appropriations for its work.

LAW ENFORCEMENT

An important point at which contact is made between cities and the national government is the field of law enforcement. The National Division of Identification and Information of the Department of Justice cooperates with police chiefs throughout the country. This division of the FBI serves as a national clearinghouse for information pertaining to criminals. It now possesses what is probably the largest and most complete collection of criminal fingerprint records of current value existing anywhere in the world. The information in these records is available to all peace officers free of any cost. Local officers are also encouraged to assist in building up and developing this collection. Fingerprint cards and franked envelopes for mailing fingerprints are supplied to local peace officers.

That this national clearinghouse of information is being used is indicated by the division's report that approximately 40,000 inquiries are received each month. It also reports that splendid cooperation is being received from law enforcement officers in building up its records, the collection being extended at the rate of approximately 2000 fingerprint records each day. Almost half of the records reveal previous criminal records; many fugitives have been apprehended and identified as a result of this service.

The National Division of Identification and Information was granted authority by act of Congress in 1930 to collect and compile crime statistics. The assumption of this activity by the national government "marked the beginning of the collection of national crime statistics on a uniform scale in order that the various officers interested in the analysis and treatment of crime conditions would be better qualified to properly analyze the various fluctuations and apply the necessary remedial action."¹³ A quarterly bulletin, *Uniform Crime Reports*, is now issued. About 2000 cities send the Department of Justice their crime statistics in the approved form so that comparisons are now possible.

The national government also furnishes valuable assistance to municipal police officers where only circumstantial evidence is available. One of the services it offers is "to make identifications

¹³ P. V. Betters, *op. cit.*, p. 61.

of typewriting, handwriting, bullets, cartridge cases, and firearms, to analyze bits of metal from exploded bombs to determine their origin, and to analyze bits of clothing, blood stains, and the like, found at the situs of the crime." It "will also cooperate with a police department in the installation of a system of short-wave radio communication between headquarters and patrolling automobiles."¹⁴

In 1932, when kidnaping became a national menace with which local authorities proved powerless to cope, Congress passed an act making kidnaping which involves interstate conspiracy or transportation of the victim across state lines a federal crime. Federal agents proceeded to assist local authorities in apprehending and prosecuting kidnapers. Thus the federal government came to the assistance of the local authorities in this problem. The national government has made further use of its power over interstate commerce to strengthen our law enforcement machinery in dealing with the modern criminal. The National Motor Vehicle Theft Act of 1919 made it a federal crime to take a stolen car across a state line. In 1934 this was extended to all stolen property of a value of \$5000 or more. The Fugitive Felon Act of 1934 made it a federal offense for a person to flee from one state to another for the purpose of avoiding prosecution or the giving of testimony in certain cases. No longer was it necessary in such cases to rely upon extradition—a procedure which was frequently unsatisfactory. These are illustrative of the statutes passed by Congress which make it possible for federal and local law enforcement officers to cooperate in fighting crime.

FIRE PREVENTION AND PROTECTION

The Bureau of Mines has made several studies which are of value to cities in fire protection and fire fighting. Studies have been made of sewer gas and sewer gas explosions, and publications of value to municipal officials in meeting this problem have been issued.¹⁵

¹⁴ Herbert Wilson, "How the Federal Government Assists Municipalities," 12 *Pub. Management* 509 (Oct., 1930).

¹⁵ The following titles indicate the nature of these studies: "Gas Hazards in Street Manholes"; "Cases in Manholes: A Survey of a Utility in Boston, Massachusetts"; "Quantity of Gasoline Necessary to Produce Explosive Vapors in Sewers"; "Inflammability of Mixtures of Gasoline Vapor and Air."

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Publications have also been issued on the handling and storing of gasoline. A publication issued in 1922 gave information on the selection of a non-hazardous site, and included model state laws, municipal ordinances, and regulations governing the safeguarding of gasoline storage tanks.¹⁶ The Bureau of Mines also advises cities in the selection and use of gas masks and oxygen-breathing apparatus for equipping their fire departments. Several publications have been issued on this subject.

The Bureau of Chemistry and Soils of the Department of Agriculture also renders some assistance in the field of fire protection.

In its dust explosion work the Bureau has been cooperating rather closely with municipalities (particularly the fire departments of a number of the larger cities) in developing its research program and in extending knowledge upon the subject. Many cities have requested assistance in connection with their dust explosion activities. The Bureau's assistance has been principally in the form of lectures, demonstrations, and the use of motion-picture reels to call to the attention of local fire departments the dust explosion hazards in industrial plants. Service of this character has been given to the cities of Baltimore, Washington, Philadelphia, Milwaukee, and Buffalo.¹⁷

The studies made by the Bureau of Standards have also been of value in the prevention of fires. The fire resistance of materials and the extent to which various materials and appliances are hazards have been studied.¹⁸

HEALTH ADMINISTRATION

The United States Public Health Service conducts many services of value to cities. Research work is carried on by the Service and through its publications the results of these investigations are available to cities. *Public Health Reports* is the weekly publication of the Service. Studies of special health problems are in some cases made in cooperation with cities. Surveys of city health administration, sanitary surveys, milk sanitation surveys, and venereal disease prevalence surveys are made at the request of municipal officials.

¹⁶ John F. Miller, *op. cit.*, p. 52.

¹⁷ P. V. Betters, *op. cit.*, p. 40.

¹⁸ Herbert Wilson, *op. cit.*

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An information service on public health administration is available to cities. If there is no published material which will answer the request, an effort is made to secure the information.¹⁹

The Food and Drug Administration of the Department of Agriculture cooperates with municipal officers who enforce laws regulating the manufacture and sale of food and drugs. This is effected through the Office of Cooperation, which was established in 1913. Upon request the Administration will advise cities on local health problems, make analyses of food and drug samples, and hold conferences with municipal officers.

The Bureau of Animal Husbandry in the Department of Agriculture cooperates with municipal health departments in meat inspection. Upon the request of a city, the Bureau "will not only furnish expert advice in drafting ordinances but will conduct surveys of the local inspection situation and make such recommendations as it believes are necessary for an adequate and comprehensive system of inspection."²⁰ The federal meat inspectors in charge in 250 cities confer and cooperate with local officials in preventing the use of unfit meat. The Bureau of Dairy Industry of the Department of Agriculture advises cities on dairy sanitation and dairy and milk inspection. It assists them in framing milk ordinances and regulations, instructs local inspectors as to methods of inspection, and instructs local officers in the laboratory control of milk.

The Bureau of Mines of the Department of Commerce has carried on extensive studies in smoke abatement, in some cases in cooperation with cities. There are several publications of the Bureau on this subject. The Bureau has also cooperated with several cities on the ventilation of tunnels. Exhaustive tests have been conducted "to determine the amount and composition of exhaust gases from motor vehicles in relation to the ventilation of vehicular tunnels, and the physiological effects of exhaust gases from motor vehicles."²¹ Several publications on this subject are available for the use of city officials.

¹⁹ L. F. Schmeckebier, *The Public Health Service*, Institute for Government Research, Service Monograph No. 10, Baltimore, 1923; James A. Tobey, "Federal Health Agencies as an Aid to City Officials," 36 *Am. City* 232 (Feb., 1927); R. D. Leigh, *Federal Health Administration in the United States*.

²⁰ Paul V. Betters, *op. cit.*, p. 38.

²¹ *Ibid.*, p. 20.

EDUCATION

The Office of Education serves as a national clearinghouse of information on educational problems. School surveys are made at the request of the proper school authorities. These surveys were first inaugurated in 1911; since that time from four to eight have been made each year. In addition to these formal surveys, advice and information are furnished to municipal boards of education and superintendents of schools. The publications of the Office of Education dealing with the various general and technical problems of municipal school administration are of great value. The aim of these publications is to keep municipal school officials in touch with the newer developments throughout the country.

PUBLIC WORKS AND RELIEF PROGRAMS

In the depression period following 1929, state and local governments found themselves unable economically to meet the situation. By 1932, as a result of widespread unemployment, local governments were unable to meet the relief problem, a burden which they had formerly carried without assistance. Cities and states turned to the federal government for assistance which, with the advent of the New Deal in 1933, assumed an active and positive role in helping state and local governments meet the situation. Federal-municipal relationships developed in this period, especially in the fields of public works and relief. It was in the 1930's that there developed the practice of making federal funds available directly to cities, rather than through state governments. The cities were held responsible for the proper expenditure of the funds allotted to them, and also for their repayment.

The federal Emergency Relief and Construction Act of 1932 made available to the Reconstruction Finance Corporation the sum of \$1,500,000,000, to be used in making loans to (or contracts with) certain specified agencies for "self-liquidating" projects which would create employment. Municipalities were among the agencies, which, according to the act, were qualified to borrow money. The act defined a "self-liquidating" project as follows: "A project shall

be deemed to be self-liquidating if such project will be made self-supporting and financially solvent and if the construction cost thereof will be returned within a reasonable period by means of tolls, fees, rents, or other charges, or by such other means (other than by taxation) as may be prescribed by the statutes which provide for the project." The act went on to exclude taxation as a source of revenue for such purposes. It stated that a project must itself produce sufficient revenues to make it self-supporting and to return its construction cost within a reasonable period. Where projects were legally authorized and were self-liquidating in character, and if adequate security for the repayment of the loan could be given, federal aid for cities was now available. The act provided that such loans should run for a period of ten years, and that they might run for longer periods when the board of directors decided it was necessary. Interest rates were to be fixed in each instance in the light of all the circumstances.

Another possible means of the national government indirectly controlling municipal matters was revealed in the provision which prescribed the conditions upon which loans were made to cities. The act provided that:

1. Except in executive, administrative, and supervisory positions, as far as practicable no individual directly employed on any project shall be permitted to work more than 30 hours in any one week.
2. In the employment of labor in connection with any project, preference shall be given, where they are qualified, to ex-service men with dependents.
3. No convict labor shall be directly employed on any project.

A new development was thus made in the field of city-federal relations. For the first time in American history, as pointed out by Paul V. Betters, "cities and the federal government entered into a debtor-creditor relationship, and cities were placed under certain legal and moral obligations to the national government."²² Not only was money being loaned to cities by the national government, but the conditions under which it was spent were regulated in part. The act proved to be ineffective and has been referred to as a

²² *Municipal Year Book*, 1936, p. 155.

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"dismal failure."²³ No grants (only loans) were provided from the federal government, and as the interest rates were not attractive, the total loans to cities were small. The act is significant, however, as an indication of future developments in the field of city-federal relations.

The National Industrial Recovery Act of 1933 provided further financial aid to cities in the financing of a wide variety of public works, municipal improvements, and housing and slum-clearance projects. The "self-liquidating" restrictions on loans from the Reconstruction Finance Corporation were now removed. In addition to federal loans to municipalities for the full cost of public works, or for any "publicly owned instrumentalities or facilities," provision was made in the act for outright grants (gifts) up to 30 per cent of the cost of the labor and materials used in the "construction, repair or improvement of any such project."²⁴ Another important step in the field of city-federal relations was taken, with cities being specifically mentioned among the political units eligible to participate in the program.

Another federal agency which aided and stimulated the construction of public works and thus aided unemployment was the Public Works Administration. The PWA was an attempt not only to provide work for the unemployed but to aid private industry by creating a demand for building materials. PWA projects involved primarily new construction rather than repairs. New public buildings—city halls, hospitals, and schools—were built with PWA assistance, as well as public utilities (water and light plants) and sewage disposal systems. Most PWA projects were constructed through private contractors, although some were carried out directly by local governments. The PWA paid part of the cost of labor and materials for these projects, and loaned the remainder. State

²³ M. L. Wallerstein, "Federal-Municipal Relations—Whither Bound," 25 *Nat. Mun. Rev.* 453 (Aug., 1936). Cf. Wylie Kilpatrick, "Federal Assistance to Municipal Recovery," 26 *ibid.* 337, 339 (July, 1937). Also see P. V. Betters, "Federal Loans to Cities for Self-Liquidating Projects," 14 *Pub. Management* 289 (Sept., 1932).

²⁴ "Federal Loans and Grants Now Available for Local Public Works and Municipal Improvements," 48 *Am. City* 35 (July, 1933); "How to Apply for Federal Aid for Public Works," 48 *ibid.* 71 (Sept., 1933); P. V. Betters, "Municipalities and the Federal Public Works Program," 15 *Pub. Management* 195 (July, 1933). The grant was later increased to 45 per cent.

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and local governments responded to the opportunities offered by the PWA, the applications for assistance under this program exceeding the money available.

With the advent of the Roosevelt administration in 1933, a new approach was made to the relief problem.²⁵ The Federal Emergency Relief Act of May, 1933, provided for direct federal relief grants to the states of \$500,000,000; the states in turn distributed the money to local governments. The national government laid down certain requirements which state and local governments had to meet in order to qualify for federal funds. From 1933 to 1935, the major share of relief expenditures was carried by the federal government. FERA funds were available for both direct relief and work relief, but in actual practice most of them went for direct relief. To put greater emphasis upon work relief, the Civil Works Administration was inaugurated in November, 1933.²⁶ Work relief was now transferred to the CWA, direct relief remaining a function of the FERA. Many CWA projects were sponsored by local governments, the sponsor supervising the working force and supplying equipment and materials, with all labor costs being paid by the national government. Much repair work on city streets, parks, and public buildings was carried out by the CWA.

In May, 1935, the Works Progress Administration was created. This was primarily a federal program, but state and local governments acted as sponsors of WPA projects, contributing materials and equipment. The workers were drawn from families on relief, being certified by state and local relief agencies. The WPA program came to an end in 1943, with a total expenditure from its inception in 1935 of about \$10,500,000,000. Approximately \$7,500,000,000 was the federal share for the construction of streets and highways, schools and other public buildings, water and sewage plants and mains, and airports.²⁷

The degree of assistance given by the federal government to state and local governments is significant; of the \$4,500,000,000 provided for emergency relief from January, 1933, through August, 1936, 66 per cent came from national funds, 16 per cent from state

²⁵ See R. H. Wells, *American Local Government*, chap. v; Wylie Kilpatrick, "Federal Assistance to Municipal Recovery"; *Urban Government*, pp. 110-119.

²⁶ It ended in April, 1934.

²⁷ *Municipal Year Book*, 1943, p. 373.

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funds, and 18 per cent from local funds. The part taken by the national government in state and local public construction projects during the emergency period is shown in the accompanying table.²⁸

STATE AND LOCAL PUBLIC WORKS CONSTRUCTION, 1928-1936
(Millions of dollars)

| Year | <i>Local and State Construction</i> | |
|------|-------------------------------------|---------------------------------|
| | <i>Local and State Funds</i> | <i>Federal Grants and Loans</i> |
| 1928 | \$2206 | \$ 81 |
| 1929 | 2100 | 77 |
| 1930 | 2335 | 96 |
| 1931 | 1997 | 163 |
| 1932 | 1403 | 107 |
| 1933 | 1053 | 430 |
| 1934 | 731 | 1430 |
| 1935 | 1009 | 1058 |
| 1936 | 1298 | 2046 |

The significance of the emergency activities of the federal government in attempting to relieve unemployment may be shown by the following statement of expenditures in San Diego:²⁹

| | |
|---|----------------|
| City operating costs, fiscal year 1936-37 (excluding debt charges) | \$4,511,277.74 |
| WPA expenditures in San Diego for same period (federal only) | \$3,796,163.00 |

The federal government's expenditures on the WPA program almost equaled the city's operating costs.

Federal aid to states for highway construction is of long standing. The Federal-Aid Highway Act of 1944 was the first case in which special provision was made for roads in urban areas. Urban areas are those "including and adjacent to a municipality or other urban place of 5000 or more" population. The three-year program of \$500,000,000 per year provides that one-fourth, or \$125,000,000 a

²⁸ Wylie Kilpatrick, "Federal Assistance to Municipal Recovery." See also *Urban Government*, p. 106.

²⁹ *San Diego Affairs*, 1936-37, quoted in P. V. Betters, "The Federal Government: A Problem in Adjustment," 199 *Annals of American Academy of Political and Social Science* 190 (Sept., 1938).

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year, may be assigned to projects in urban areas. This sum is apportioned among the states on the basis of their urban population. A new step was taken in federal-city relations in this act, with the specific recognition by Congress of the needs of cities in street construction.³⁰

Federal grants are allocated directly to cities under the Federal Airport Act of 1946, unless the states require that these funds be channeled through state agencies. The Senate had voted earlier to channel the money through state agencies exclusively; but as finally enacted, the law recognizes the desirability of direct grants to cities and other sponsors of airport projects. Under this act, the federal government will pay up to 50 per cent of the construction costs of airports, and up to 25 per cent of the cost of acquiring land for this purpose.

PUBLIC WORKS PLANNING

Another federal agency established to assist local governments was the Public Work Reserve.³¹ This agency, which operated through the facilities of a nation-wide WPA project sponsored by the Federal Works Agency and co-sponsored by the National Resources Planning Board, was established in 1941 to obtain a list of useful public works which needed to be undertaken, and to encourage local governments to prepare and maintain well-planned programs of public work.

In most states the Public Work Reserve maintained a state director and a staff of assistants, including engineers, finance analysts, and others to assist local officials in developing their programs. After the needed improvements had been listed and arranged in some order of preference, the next step was to analyze the financial resources of the local units to determine the funds that could be provided for the construction of public improvements during the period covered by the program. In scheduling projects for construction, consideration was given not only to the desirability of the projects but also to the funds available for them. Both the Public

³⁰ *Municipal Year Book*, 1945, p. 131. Herbert D. Fritz, "Cities and Federal-Aid Programs," 27 *Pub. Management* 163 (June, 1945).

³¹ *Municipal Year Book*, 1942, p. 410.

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Work Reserve and its successor, the Local Public Works Programming Office, were abandoned when Congress failed to make further appropriations for this purpose.

The War Mobilization and Reconversion Act of 1944 authorized loans or advances to state and local governments for planning future public works. And in 1945 Congress appropriated \$30,000,000 to assist non-federal public agencies in preparing such plans. The Federal Works Agency assigned to the Bureau of Community Facilities the responsibility of administering this program. When funds become available for the construction of a project which has been planned under this program, the advance from the federal government must be repaid without interest.³² In his State of the Union message to Congress in 1946, President Truman recommended that the policy of making non-interest-bearing loans to local governments to assist in planning public construction be continued.

SOCIAL WELFARE PROGRAM

The Social Security Act of 1935 has been of indirect assistance to state and local governments. The program, which includes old age insurance, unemployment compensation, and aid for the blind and for dependent children, is of assistance to local governments, and should alleviate the relief problem in the future. By providing against the important causes of destitution, the program has lightened the responsibility and task of local governments.

The National Youth Administration and the Civilian Conservation Corps were also of indirect financial assistance to state and local governments in the depression period of the 1930's, through the student aid work under the former, and the work provided for young men under the latter.

HOUSING

During the present century there has been an increasing realization on the part of public officials that building codes and restrictive

³² Barbara Terrett, "Advance Planning of Public Works," 27 *Pub. Management* 165 (June, 1945).

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legislation are inadequate to meet the housing problem in American cities. Positive action is needed to secure adequate housing facilities. Tax exemption and other methods of stimulating private construction have proved to be inadequate. It was not until the national government entered the field that real progress was made.

A housing conference was held in Washington in 1931, and in the following year the first federal legislation was enacted. With the advent of the New Deal, the housing problem was attacked with renewed interest, and under federal leadership progress has now been made in this field. The early legislation attempted to combine housing and the relief of unemployment, with emphasis on the latter. In the more recent federal legislation, emphasis is placed on providing adequate housing facilities. An effort has been made to secure adequate housing through the stimulation of private construction, or by public housing.

The Reconstruction Finance Corporation was authorized by act of Congress in 1932 to make loans to corporations formed for the purpose of providing housing for families of low income, or for reconstructing slum areas, provided they were regulated by state or municipal law as to the rents to be charged. In the following year (1933), this function of making loans to limited-dividend housing corporations was taken over by the Public Works Administration. Loans could also be made to state and local governments which undertook housing projects. No public body applied for a loan; and the number of loans made to limited-dividend corporations, by either the RFC or the PWA, was discouragingly small. The PWA then decided to use the power given it in the statute and to enter the housing field directly. Fifty-one projects were constructed in 37 cities. A court decision that the federal government could not use its power of eminent domain to acquire land for housing sites meant that direct federal housing was not feasible.³³

In 1937 Congress adopted a new housing policy, probably in

³³ *United States v. Certain Lands in Louisville*, 78 Fed. (2d) 684 (1935). The Supreme Court granted a writ of certiorari in this case, but this was later dismissed on the motion of the Solicitor General. 286 U.S. 567; 297 U.S. 726. See also *United States v. Certain Lands in City of Detroit*, 12 Fed. Supp. 345 (1935). For notes on the condemnation of land by the federal government for slum clearance, see 35 *Columbia Law Rev.* 284 (Feb., 1935); 48 *Harvard Law Rev.* 1021 (Apr., 1935); 33 *Mich. Law Rev.* 957 (Apr., 1935).

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part as a result of the unfavorable decision on the use of eminent domain by the national government for this purpose. No longer was the national government to act as a landlord through PWA-operated housing projects. The 51 projects already completed were to be leased by the newly created United States Housing Authority to local housing authorities. A policy of decentralized housing, with the national government making loans and granting subsidies to local housing authorities, has now been adopted. A new step in federal-local relationships was taken, the states being largely short-circuited in the new policy.

Beginning with the Lanham Act in 1940 and continuing during the war, the federal government by direct action attempted to relieve the housing situation in overcrowded communities. Ten different federal agencies were participating in the program of public housing in communities to which the national defense effort and war production had brought serious housing shortages. Local housing authorities cooperated with federal agencies in the construction and management of these facilities. In 1946 Congress enacted legislation to provide housing facilities for returning veterans. The National Housing Administrator sent letters to the mayors of all cities of over 25,000 population, and to smaller communities which had housing shortages, asking them to establish emergency housing committees to expedite the veterans' emergency housing program. Both in war and in peace, federal-city relations have grown closer and cooperation more active in the housing field.

FEDERAL REGIONAL AUTHORITIES AND LOCAL GOVERNMENT

Federal regional agencies, such as the Tennessee Valley Authority, which are engaged in multiple-purpose programs must maintain close contact with local governments.³⁴ Their activities, both directly and indirectly, influence and affect the conduct of local affairs. The acquisition of property for construction purposes removes it from local tax rolls and requires some fiscal adjustments between the regional agency and the local government. In the case

³⁴ The section on regional authorities is based on Lawrence L. Durisch, "Local Government and the T. V. A. Program," 1 *Pub. Adm. Rev.* 326 (Summer, 1941).

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of the TVA this was met by in lieu payments, which will be discussed in a later section of this chapter. The development of the region has been of unquestioned benefit but it has also created problems. The influx of workers for construction projects has increased for some governments the problems of local public health administration, law enforcement, highway construction, and the provision of educational facilities. In meeting these problems the Authority has cooperated with and assisted local governments in providing the expanded governmental services. It has assisted them in planning activities and in providing recreational facilities and library service.

The sale of power by the TVA to municipal and county systems is another step in federal-local relations. Through its contract with the local government, the Authority attempts to make the operation of the local distribution system self-sustaining. Resale rates are fixed and funds must be set aside for reserve and amortization purposes. Records must be kept by the local governments in a form prescribed by the Authority, and audits are made by it at regular intervals. The sale of power by this federal agency to local governments has stimulated government ownership of power distribution systems.

The success of a federal regional agency depends in part upon the cooperation it receives from state and local governments. In this process of cooperation it influences local governments—and on the basis of the TVA experience the influence will be in the direction of improvement.

INTERGOVERNMENTAL TAX EXEMPTION³⁵

In an early case the Supreme Court of the United States held that one of the implied limitations upon the taxing power of the states is that they cannot tax the instrumentalities of the national

³⁵ A. M. Hillhouse, "Intergovernmental Tax Exemption," *Municipal Year Book*, 1939, pp. 345-381; E. D. Mallery, "Federal-City Relations in 1938," *ibid.*, 1939, pp. 156-159; P. V. Betters, "The Case Against Taxing Income from Governmental Securities," *Law and Contemporary Problems* (Spring, 1940), Duke University Law School; J. M. Mathews, *The American Constitutional System* (1940), pp. 257-266; Edward H. Foley, Jr., and Henry Epstein, "Shall We Tax Government Bonds," 30 *Nat. Mun. Rev.* 674 (Dec., 1941); *Federal, State and Local Fiscal Relations*, pp. 27-28.

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government.³⁶ Later, the Court held that the converse of the doctrine also applied, and that the income of a state judge was not subject to taxation under a national income tax law.³⁷ Under this doctrine, it was assumed that state and municipal employees were not subject to the national income tax on their salaries, and that federal employees were not subject to state taxation. Beginning about 1930, decisions of the Supreme Court began to cast some doubt as to whether this doctrine still held, the view being that it would not be applied mechanically, but the results of its application upon the operations of government would be considered in the particular case.³⁸ In 1939 the Court definitely overruled the 1870 case of *Collector v. Day* and discarded the doctrine of the immunity of federal employees from state taxes on their salaries; in its opinion it made clear that state and local employees are subject to a federal tax on their salaries, so long as it does not interfere with the performance of a governmental function.³⁹

Congress in 1939 passed the public salary tax bill extending the federal income tax to the salaries of state and municipal officers and employees, and permitting the state governments to tax the income of federal employees; and in March, 1940, for the first time, state and municipal employees paid a federal income tax. A doctrine which had no logical defense has thus passed from American constitutional law and practice. The power to tax does not involve the power to destroy as long as the Supreme Court sits and can hold unconstitutional tax laws which are discriminatory or which actually interfere with the performance of state and municipal governmental functions. Several states have no income tax, some being prohibited from levying such a tax by their constitution, so that intergovernmental taxation of the salaries of officers and employees is not in all cases reciprocal in actual practice.

President Franklin D. Roosevelt advocated that another step be taken by Congress by enacting legislation extending federal taxes to the income derived from state and local securities, and permitting states and cities to tax the income from federal bonds. Municipali-

³⁶ *McCulloch v. Maryland*, 4 Wheat. 316 (1819).

³⁷ *Collector v. Day*, 11 Wall. 113 (1870).

³⁸ *Educational Films Corporation v. Ward*, 282 U.S. 397 (1931).

³⁹ *Graves v. New York*, 306 U.S. 466 (1939). Also see *Helvering v. Gerhardt*, 304 U.S. 405 (1938).

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ties have opposed such legislation and thus far it has not been enacted. The cities point out that a federal tax levied on the income from their bonds would increase interest rates and thus place an additional burden on local taxpayers. They maintain that they would derive no additional revenue from a tax levied on the income from federal bonds, since in most cases they have no power under state law to levy such a tax; even if it were given, the feasibility of a municipal income tax would be open to question. As far as cities are concerned, taxation of the income from government bonds would be reciprocal in theory only, except insofar as state income taxes accrue to the benefit of cities. The view taken by the American Municipal Association that it is *reciprocal benefits* from such a tax policy in which cities are interested, rather than a reciprocal power to tax, is a reasonable one. And seen in this light, it seems certain that the cities will lose more than they can expect to gain by removing the immunity of governmental securities from taxation.

PAYMENTS IN LIEU OF TAXES ON FEDERAL PROPERTY

Another problem in the field of intergovernmental fiscal relations concerns the tax treatment of publicly owned real estate.⁴⁰ The advantages of immunity here rest with the national government since it does not levy taxes on property and would not benefit by the waiver of immunity on the property of state and local governments. There has been agitation by state and local governments to make real estate owned by the national government subject to taxation. It is only just, these government units contend, that property held by the federal government contribute a share of the cost of government comparable to that represented by taxes on privately owned real estate. The Municipal Finance Officers' Association at its 1941 meeting adopted a resolution which condemned the federal government's general practice of claiming exemption from local property taxes and of substituting service payments less

⁴⁰ *Federal, State and Local Fiscal Relations*, pp. 24-26; *Urban Government*, pp. 120-124; Lawrence L. Durisch "Payments in Lieu of Taxes by the Tennessee Valley Authority," 3 *Jour. of Politics* 318 (1941); Alex T. Edelman, "Power Projects Pay Tax Losses," 30 *Nat. Mun. Rev.* 478 (Aug., 1941); "Public Ownership and Tax Replacement by the T. V. A.," 35 *Am. Pol. Sci. Rev.* 727 (Aug., 1941).

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in amount than the taxes paid by similar property privately owned. The resolution called upon the federal government to end this "discrimination in taxing and consequent curtailment of local government revenues," and petitioned it "to pay all local government taxes in the same proportion that other similar privately owned property pays." There is evidence of an increasing tendency to question the position that federal property should be exempt from tax payments to state and local governments.

The national government has waived tax immunity on the real property of a number of federal banking and credit agencies. A large portion of the property is temporarily under federal ownership as a result of mortgage foreclosure. An act of 1941 specifically denied to state and local governments the power to tax personal property of the Reconstruction Finance Corporation, or of other corporations set up or wholly financed by it.⁴¹ The right to tax real property was thus implied. In 1946 the Supreme Court held that state and local governments may collect real property taxes on machinery owned by the Defense Plant Corporation or the Reconstruction Finance Corporation, or on such machinery when it is leased to private industry, if under the law of the state such machinery is defined as real estate. The Court was of the opinion that "the Congressional purpose can best be accomplished by application of settled state rules as to what constitutes 'real property' so long as it is plain . . . that the state rules do not effect a discrimination against the government."⁴²

The national government has been unwilling to waive its tax immunity, but Congress has in several cases authorized in lieu payments to state and local governments, approximately 40 such acts having been passed. The tax immunity of federal property has been maintained, except as pointed out above in the case of property held by certain banking and credit agencies, the payments being in lieu of taxes, rather than the property being made subject to taxes at the rates paid on privately owned property. Where federal ownership of property results in an increase in expenditures

⁴¹ Some cities and states had claimed the right to tax this property, but court decisions had clearly established that it enjoyed immunity under the original act of 1932. *Municipal Year Book*, 1942, p. 211.

⁴² *Reconstruction Finance Corporation v. Beaver County*, 90 Law. Ed. (U.S.) 919 (1946).

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for services rendered by state and local governments—such as police, fire, health, and education in connection with army camps—the burden should be borne by the public generally rather than by a local community. The appropriation by Congress in 1941 of \$150,000,000 for public facilities and services in defense areas where new or added services were needed because of the defense program, but which could not be financed locally without excessive taxes or borrowing, represents a significant recognition of federal responsibility. The Lanham Act of 1940 provided that in lieu payments on federal defense housing projects might be made to state and local governments. This payment was made mandatory in 1941, and the amount to be paid was the same as would be collected if the properties were not exempt from taxation. When the federal government enters the commercial field and produces services or materials for sale on a commercial basis, a strong case can be made for tax or in lieu payments. The power-producing activities of the Tennessee Valley Authority are illustrative of this type of federal function; and in lieu payments are being made by this agency.

The benefits to the local community and the country in general from federally owned property vary greatly; an army camp is of national benefit, whereas a power-producing dam is of local, state, or regional benefit. Whether the special local benefit is great or small is a factor to be considered in the federal government's adopting an in lieu tax policy. The concentration of federal property in certain communities is another factor. If the amount of property acquired by the federal government and thus removed from the tax rolls in a certain community is great, the case for in lieu payments may be stronger. Finally it should be pointed out that federal ownership of property does not always reduce the cost of state and local government in a given area, but merely shifts it to the taxable property in the jurisdiction.

The question of in lieu payments by the federal government may be looked upon as in a state of flux. Pressure from state and local governments may yet result in congressional action waiving further the tax immunity of the federal government, as it did in effect in the case of real property of the Reconstruction Finance Corporation and its subsidiaries in the Act of 1941. A legal question, as

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well as one of policy, arose with the end of the war, in connection with property leased from the federal government or sold on long-term contract, with the title remaining in the federal government until the contract was completed. A 1946 decision of the Supreme Court throws some light on the final disposition of this question. In this case the federal government had sold property to a private purchaser, the government retaining legal title until annual installments had been made to complete the payment. The Court held that the property was subject to taxation by Ramsey County, Minnesota, even though the federal government had retained legal title as security for the unpaid purchase price. Equitable ownership had been transferred to the private purchaser. The decision may pave the way to the assessment by state and local governments of much property acquired by the federal government during the war, and now being sold or leased on a long-time contract, with legal title remaining in the federal government until the terms of a purchase contract are completed.⁴³

FEDERAL DEBT ADJUSTMENT LEGISLATION

During the 1930's when cities were having financial difficulties, the federal government came to their assistance, making use of its power to pass bankruptcy legislation to provide a plan of municipal debt adjustment. This proved especially helpful to some hard-pressed municipalities. The method provided in this legislation for the adjustment of municipal debts will be considered in a later chapter on municipal indebtedness.⁴⁴

THE NATIONAL EMERGENCY AND WAR PERIOD⁴⁵

In the division of powers provided in the Constitution, war powers are conferred upon the national government. It is this government rather than the state and local governments that is

⁴³ S.R.A., Inc., v. Minnesota, 90 Law. Ed. (U.S.) 663 (1946).

⁴⁴ See chap. xxx.

⁴⁵ A. Miles and R. H. Owsley, *Cities and the National Defense Program* (1941); D. W. Hoan and others, "Effect of Defense Program on Cities," 22 *Pub. Management* 301 (Oct., 1940); D. W. Hoan, "States and Cities in the Defense

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given power to raise and support armies, provide and maintain a navy, and declare war. Our experience during the First World War in 1917-18, during the national defense program in 1940-41, and following the declaration of war on December 8, 1941, demonstrated that the cooperation of state and local governments is essential to the execution of war and to carrying out a national defense program. In recognition of the need of this cooperation, there was established in 1940 the Division of State and Local Cooperation as part of the Advisory Commission of the Council of National Defense. In 1941 the Office of Civilian Defense, within the Office of Emergency Management, was created, superseding the Division of State and Local Cooperation of the National Defense Advisory Commission. The OCD continued until 1945, when it was liquidated.

The national government thus recognized the need and sought to secure the cooperation of local governments in the defense program. It encouraged the creation of state and local defense councils, and by letters, bulletins, and field consultations kept them informed of major developments and indicated the action on their part which would be most helpful. A mere recital of the names of some of the federal wartime agencies—Office of Community War Services, Committee for Congested Production Areas, Municipal Affairs Committee of the Office of Price Administration—indicates the federal government's recognition that local communities had an important part in the war effort and that their cooperation and successful operation were essential. Federal and municipal governments cooperated both in providing housing facilities, price and rent control, health protection—especially venereal disease control in communities near war camps—and recreation in defense and war production communities, and in securing materials and supplies needed by cities where the community services provided would expedite the war effort. Our experience demonstrates that while the so-called war powers may be vested in the national government, the state and local governments are affected by and in turn affect

Program," 30 *Nat. Mun. Rev.* 141 (Mar., 1941). Beginning in November, 1940, a section entitled "Defense News Affecting Cities" appeared in each issue of *Public Management*. A similar section appeared in each issue of the *National Municipal Review*, beginning in May, 1941.

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our defense and war efforts. The federal government and the cities were by necessity drawn into a closer relationship during the war. The extent to which the effects of this wartime experience will be permanent remains to be seen.

THE FUTURE OF CITY-FEDERAL RELATIONS

An effort has been made in the preceding pages to indicate the extent and significance of the activities of the national government in the field of city government. It is necessary to consider city-federal relations in order to understand the city's place in our governmental system.

Further development of national activities in the municipal field may be expected in the future. We may expect an extension of the advisory functions of the national government. As its activities in this field have been of unquestionable value, the possibility of further development is encouraging to those who are interested in securing improvement in city government.

At the present time, however, the agencies which are available to serve cities in an advisory capacity are widely scattered in different departments, commissions, and bureaus. They would be more serviceable to the cities if they were centered in one department. This might take the form of a federal bureau of municipalities or a bureau of local government. All activities dealing with local government might be grouped together and placed under this bureau; or they might remain in their respective departments as at present, the bureau merely serving as a skeletal organization, a central clearinghouse, to which the cities could go for advice. The bureau in turn would call upon the proper department for the information desired. It would act as a correlating organization for the various governmental agencies whose activities are of interest to local governments.

Since many bureaus and commissions are engaged in other activities than those of interest to cities, and since, in fact, their work in the municipal field is often only incidental, the creation of a national bureau of municipalities as a skeletal organization seems more desirable. As has been pointed out before, though the Bureau of Mines is engaged in work of interest to cities and advises them

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on certain of their problems, this is incidental to its main work, and it would be unwise to transfer it to a bureau of municipalities. Such a bureau, however, serving as a clearinghouse, could correlate the work of the Bureau of Mines (insofar as it relates to municipal government) and make it available to cities in a more satisfactory manner than at present.⁴⁶

A system of federal aid offers a possible development of city-federal relations in the future. The use of conditional grants-in-aid to the states has been an effective method of controlling state policy in the fields in which aid has been granted. Federal aid for highway construction offers an excellent illustration of the effectiveness of this device in controlling state policy. A step in this direction was made in the Emergency Relief and Construction Act of 1932, in which the national government, in making loans to cities, prescribed the conditions under which they would be made.⁴⁷ The Federal Airport Act of 1946 made provision for direct grants to cities.⁴⁸ The precedent having been established, further use of conditional grants to cities may be anticipated.

These grants could be made to cities for health work, charity work, law enforcement, housing, or for anything in which the national government desires to insure that a minimum standard will be maintained. This aid should prove, in the case of cities as it has in the case of states, to be an effective incentive toward improving their standards in order that they may qualify. Another possible advantage to be derived from such a plan would be the equalization of the burden among the cities so as to insure the minimum efficiency

⁴⁶ See William Anderson, "The Federal Government and the Cities"; 37 *Am. City* 576 (Nov., 1927).

⁴⁷ The Civil Works Administration, which was inaugurated in November, 1933, was in some respects an agency for a conditional grant of money. The money was not granted to local authorities, however, but was disbursed through federal disbursing agents. Certain rules and regulations were established which required state and local authorities to cooperate before work projects could be undertaken. The grants of money under the Federal Emergency Relief Act of 1933 were to states rather than to cities.

⁴⁸ The Federal Airport Act did, however, recognize the right of a state to veto applications in the following provision: "Nothing in this Act shall authorize the submission of a project application by any municipality or other public agency which is subject to the law of any State if the submission of such project application by such municipality or other public agency is prohibited by the law of such state."

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desired.⁴⁹ This use of federal aid would unquestionably be opposed by many as a further encroachment by the national government on the powers reserved to the states—and to their agents, the cities. The question, however, should be as to whether such a plan would aid in improving conditions in the field of city government. If so, the fact that it means encroachment by the national government should not be material.

The centralization of control over cities either direct or indirect, has been viewed with fear and disfavor by some, and with approval by others. Harold S. Buttenheim, editor of *The American City*, stated in 1934 that there was no justification even in our emergency "for centralizing in Washington a degree of control over municipal affairs which is wholly alien to our principles of home rule and local responsibility."⁵⁰ He did not object to—in fact he favored—the effective leadership of the federal government in making information available to cities; but he did object to the indirect control and detailed supervision over cities made possible through the relief and public work programs of the national government. On the other hand, Charles E. Merriam has looked with favor upon the development of closer local-national relations. Pointing out the unwillingness of most state legislatures to grant autonomy to cities or to assume the burden of adequate supervision over them, he suggests that the cities might well look to the federal government for leadership in meeting their problems—especially those which are nation-wide. "There is reason to believe," he suggests, "that it would be easier for cities to set up relations with the United States government than with the state, in many instances. Education, health, engineering and public works, police and judicial systems, parks and recreation, public welfare services, the interests of business and of labor, would be fitted in with the federal pattern of things far more readily and far more intimately than is now the case, while the wearisome, ineffective, expensive, and confusing intermediation of state and county and other minor administrative agencies would have disappeared."⁵¹

⁴⁹ For the use of grants in aid in England, see Sidney Webb, *Grants in Aid: A Criticism and a Proposal*; J. Watson Grice, *National and Local Finance*.

⁵⁰ H. S. Buttenheim, "Uncle Sam or Boss Sam," 23 *Nat. Mun. Rev.* 654 (Dec., 1934).

⁵¹ C. E. Merriam, "Cities Look to the Federal Government," 16 *Pub. Management* 1 (Jan., 1934).

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With over 50 per cent of our population classed as urban, the future of federal-city relations will depend in large part upon the attitude of cities. Congress will not fail to consider—and probably heed—their wishes; in too many cases will the reelection of a member depend upon what his urban constituents think of his record. If they want federal aid and assistance, we may expect such a program to continue and probably to develop further. There seems to be a general belief on the part of cities—and justifiably so on the basis of the record of the last fifteen years—that Congress has been more sympathetic and considerate when they have presented their problems than have state legislatures. The cities have gone on bended knees before their state legislatures and pleaded for needed legislation, but in too many cases they have returned with empty hands. Their experience at Washington has been different. As stated by Morton L. Wallerstein, Executive Secretary of the League of Virginia Municipalities:

The states must, and this does not mean a decade from now, but now, begin to realize that cities are local government units entitled to fair treatment; otherwise, I believe we will find the cities ignoring mother and looking to adopted grandmother for aid. Those who believe in more local handling of local problems, in home rule for cities, in a sympathetic relationship between the city and its mother, the state, can hardly help but deprecate these developments now taking place along national lines and realize the danger that cities will turn more and more to the federal government if the states continue to be so slow in recognizing the seriousness of the problem.⁵²

The significant question in deciding the future of federal-local relations is not what the effect will be upon local self-government or upon our traditional way of performing governmental services, but rather whether there are certain problems which can be met more satisfactorily by federal-local cooperation than by either a state-local approach or by the local governments acting alone. As an editorial in *Public Management* a few years ago said: "It should be an axiom of government that when a problem arises which must be met by the public, the governmental unit which assumes responsibility should be equal in geographical extent and financial resources

to the scope of the problem."⁵³ With the urbanization of the country, there has been a change in the nature of many governmental problems; hence a transfer or reallocation of functions is desirable and in some cases necessary. During the depression, state and local governments found their financial resources inadequate and were forced to turn to the national government for assistance. Housing, social security, and other problems may be met more successfully with a nation-wide approach than by either the state or local governments. If some governmental problems can be handled more satisfactorily by a federal-local cooperative approach, this should carry more weight in determining our future course of action than appeals to save local self-government.

Cities have recognized the rapid development of federal-city relations and have attempted to meet it. The United States Conference of Mayors, an organization of the mayors of cities having a population of over 50,000, has its headquarters in Washington. The American Municipal Association, an organization of state municipal leagues, with headquarters in Chicago, maintains a representative in Washington. Our cities have thus seen fit to maintain representatives in Washington to present their needs and points of view. They recognize the federal-city relationship as being sufficiently significant for them to maintain what is in effect a lobby in Washington to protect and further their interests.

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Municipal Powers

When the question arises in a city as to the performance of a new function, the undertaking of a new activity, or the regulation or prohibition of certain private acts, two questions are presented. First, should the city as a matter of policy undertake the activity under consideration? In the second place, assuming that it would be good policy to do so, the question arises as to whether the city is legally competent and has the power to do so. The question of policy in connection with municipal functions has been discussed in an earlier chapter.¹ The question of the legal power of the American city will now be considered.

GENERAL RULE AS TO MUNICIPAL POWERS

Municipal corporations, being created by the state, derive all of their powers from the source of their creation. "They possess no powers or faculties not conferred upon them, either expressly or by fair implication, by the law which creates them or by other statutes applicable to them." This principle has been well stated in Dillon's much-quoted rule as follows:

It is a general and undisputed proposition of law that *a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.*²

¹ See chap. ii.

² J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed., vol. 1, sec. 237; E. McQuillin, *The Law of Municipal Corporations*, 2nd ed., vol.

As indicated above, a rather strict construction has been applied by the courts to the powers granted to cities. Dillon states that "the fundamental and universal rule . . . is, that while the construction is to be just, seeking first of all for the legislative intent in order to give it fair effect, yet any ambiguity or fair, reasonable, substantial doubt as to the extent of the power is to be determined in favor of the State or general public, and against the State's grantee."³ If the municipality attempts to act beyond the powers granted, the action is void.

A few cases may be given to illustrate this rule. Jacksonville, Florida, passed an ordinance prohibiting cruelty to animals. One person who was found guilty of violating the ordinance alleged that it was void on the ground that the state law did not authorize its passage. Clearly the statutes did not expressly authorize such an ordinance. But the Supreme Court of the state held that it was authorized from the power to "prevent and remove nuisances" and "to provide for the arrest, imprisonment and punishment of all disorderly persons within the city, by day or by night, and for the punishment of all breaches of the peace, noise, disturbances and disorderly assemblies."⁴ In a case before the Supreme Court of Arkansas in 1922, the power of Little Rock to build a city hospital was questioned. "It is conceded," the court said, "that there is no express power given by the statute to municipal corporations to construct and maintain city hospitals." The court held, however, that such power could be implied from the statutory grant of power to "make and publish such by-laws and ordinances, not inconsistent with the laws of this state, as to them shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof."⁵

In both of these cases a rather liberal view was taken of the powers of a municipal corporation. The city was held to have the power to do the act questioned. Two cases may be cited in which the application of Dillon's rule resulted in a denial of the power

1, sec. 368; C. B. Elliott, *The Principles of the Law of Municipal Corporations*, 3rd ed., sec. 35.

³ J. F. Dillon, *op. cit.*, vol. 1, sec. 239.

⁴ *Porter v. Vinzant*, 49 Fla. 213, 38 So. 607 (1905).

⁵ *Cummock v. City of Little Rock*, 154 Ark. 471, 243 S.W. 57 (1922).

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that the city was attempting to exercise. The Supreme Court of Pennsylvania has held that a borough in that state may not require a railroad to erect and maintain safety gates. After examining the statutes of the state, including the provision authorizing borough authorities "to make such laws, ordinances, by-laws and regulations, not inconsistent with the laws of this commonwealth, as they shall deem necessary for the good order and government of the borough," the court held that the power to pass this ordinance had not been granted. Cities of the second and third class had been given this power, but not boroughs. The legislature might have given the power to boroughs but it had not done so, either expressly or impliedly.⁶ The city council of Cape May, New Jersey, decided that the city should be more widely advertised as a resort, and appointed a person to represent the city in the capacity of advertising agent. Clearly the statutes did not expressly confer upon the city council the power to appoint an agent for such a purpose. The city contended that the power was implied from the express authorization to appoint "such other and all subordinate officers of the said city" as "may in the opinion of the city council be necessary for the better ordering and governing the said city, for the preservation of its health, or for the convenience, safety, and advantage of commerce and trade." This contention was denied, the court holding that the power could not be implied from the statutes.⁷

In performing services and carrying on activities, cities make use of the power to contract. As in the exercise of its general corporate powers discussed above, the power of a city to contract depends upon the grant of power from the state as expressed in its charter and the general laws applicable. Unless the power to make the contract has been given by the state, either in express terms or by necessary or fair implication, it is void and unenforceable. It is generally held that a municipal corporation has the implied power to make such contracts as are reasonably necessary to enable it to carry into effect the objects of its creation.⁸

This principle of the limited powers of a municipal corporation is fundamental in a discussion of municipal activities. It must be

⁶ Pennsylvania Railroad Company's Appeal, 213 Pa. 373, 62 Atl. 986 (1906).

⁷ State v. City of Cape May, 66 N. J. L. 544, 49 Atl. 584 (1901).

⁸ See E. McQuillin, *op. cit.*, vol. 3, sec. 1269; C. B. Elliott, *op. cit.*, sec. 50.

borne in mind, however, that the legislature of the state is not unlimited in its authority to grant power to cities. Such grants of power must be consistent with the Constitution of the United States, with treaties and laws of the national government, and with the constitution of the state. In considering municipal action or activities, the question thus arises not only as to whether the power has been granted to the city, but as to the constitutionality of the grant under the federal and state constitutions.

FEDERAL CONSTITUTIONAL LIMITATIONS ON MUNICIPAL ACTION⁹

Provisions of the federal Constitution are often used to check municipal action. Municipal charters or ordinances may not conflict with any provision of the federal Constitution. The constitutionality of municipal action is questioned more frequently under the Fourteenth Amendment than under any other provision of the Constitution. This amendment provides that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." The city, being an agent or instrumentality of the state, is subject to the limitations imposed in the amendment.

The due process provision of this section is the one most often used to attack municipal action. In such cases the question is primarily one of the reasonableness of the municipal ordinance. Municipal ordinances regulating public morals, public health, and public safety are attacked on the ground that the particular regulation is unreasonable and thus unconstitutional under the due process clause. An ordinance of South Pasadena, California, which prohibited the keeping of billiard tables for public use, except those in hotels for the exclusive use of the guests, was attacked on the ground that it deprived an owner of his rights under the Fourteenth Amendment. In upholding the validity of the ordinance, the Supreme Court of the United States said: "The fact that there had been no disorder

⁹ See Harvey Walker, *Federal Limitations upon Municipal Ordinance Making Power*.

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or open violations of the law does not prevent the municipal authorities from taking legislative notice of the idleness or other evils which result from the maintenance of a resort where it is the business of one to stimulate others to play beyond what is proper for legitimate recreation."¹⁰ The question primarily involved the reasonableness of the ordinance.¹¹

Zoning ordinances illustrate the check on municipal action imposed by the due process clause of the Fourteenth Amendment. The question for the courts in such cases is the reasonableness of a municipal ordinance restricting the use of privately owned property on the basis of zones. Does an ordinance which restricts the use, the height, or the percentage of lot to be occupied, and varies such restrictions in the different zones or sections, fail under the due process clause? Are such ordinances a reasonable exercise of the police power, and do they conflict with the equal protection clause? The court determines the validity of the ordinance after taking into consideration all the circumstances in the particular case.

The principle of limiting the use to which buildings may be put on the basis of zones has been upheld, but a particular ordinance may be found to be unreasonable. Limiting the maximum height of buildings does not conflict with the due process clause, but requiring a minimum height is unreasonable. Funeral homes and fraternity houses may be excluded from certain zones, but a segregation ordinance excluding persons on the basis of race or color is unconstitutional. In zoning, as in other municipal action taken under the police power, the due process provision of the Fourteenth Amendment must be considered.¹²

The provisions of the Fourteenth Amendment that no state "shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States" and that no state shall "deny to any person within its jurisdiction the equal protection of the law" are also used to attack the validity of municipal ordinances.

¹⁰ *Murphy v. People*, 225 U.S. 623, 56 Law. Ed. 1229 (1912).

¹¹ Charles Fairman, "Federal Limitations on Police Power of Cities," 19 *Ill. Law Rev.* 401 (Feb., 1925).

¹² Alfred Bettman, "Constitutionality of Zoning," 37 *Harvard Law Rev.* 834 (May, 1924); E. McQuillin, "Constitutional Validity of Zoning Under the Police Power," 11 *St. Louis Law Rev.* 76 (1926).

The second provision has been more important in the municipal field. The question in such cases is whether municipal action is discriminatory or whether there is some reasonable basis for the difference in treatment of classes provided in the ordinance.¹³

Several recent cases have involved the power of cities to interfere with civil rights. Such cases generally arise where ordinances restrict the distribution of circulars or handbills, or regulate the holding of meetings in streets and other public places or the picketing of business establishments. In 1938, the Supreme Court of the United States handed down a decision which declared unconstitutional an ordinance of the city of Griffin, Georgia, prohibiting the distribution of "circulars, handbills, or literature of any kind" without a permit from the city manager. The Court stated that while there could be reasonable control of this matter by a city, this ordinance constituted an unreasonable interference with freedom of the press without any relation to the public welfare. The ordinance provided no standard to guide the city manager in deciding whether such material should be distributed.¹⁴ In November, 1939, the Supreme Court handed down a decision holding invalid the handbill ordinances of Los Angeles, Milwaukee, and Worcester, and a canvassing ordinance of Irvington, New Jersey. Again the Court stated that it would uphold reasonable local police regulations which were designed to protect the city from public nuisances or breaches of the peace.¹⁵

Several cases have been before the courts in recent years in which "Jehovah's Witnesses," a religious order, attacked municipal ordinances regulating their activities, especially the house-to-house sale of their literature. The Supreme Court held that a municipal ordinance which requires religious groups to pay a license tax as a condition precedent to the sale of their literature is invalid under the federal Constitution as a denial of freedom of speech, press, and religion. Even though a charge was made for the literature,

¹³ See G. D. Holt, "Constitutionality of Municipal Zoning and Segregation Ordinances," 33 *West Virginia Law Quar.* 332 (June, 1927).

¹⁴ *Lovell v. Griffin*, 303 U.S. 444, 56 Sup. Ct. 666 (1938).

¹⁵ *Schneider v. State of New Jersey* (Town of Irvington); *Young v. State of California* (City of Los Angeles); *Snyder v. City of Milwaukee*; *Nichols v. Commonwealth of Massachusetts* (City of Worcester), 308 U.S. 147, 84 Law. Ed. 145 (1939).

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the court held that it was a religious rather than a political venture.¹⁶

A case involving local control or interference with civil rights which received much attention was the controversy in 1938 between the government of Jersey City and the CIO regarding the latter's right to hold meetings in public places. Following the refusal of the Director of Public Safety to issue a license to the CIO to meet in a public square, the case was finally carried to the federal Supreme Court.¹⁷ The Court held that the power of cities to regulate and control the use of parks and streets was not absolute, and that citizens were denied the privileges guaranteed them by the Fourteenth Amendment when, in order to hold public meetings, they were required to secure permits which could be withheld arbitrarily. The action of the local authorities is subject to review in the federal courts under the Fourteenth Amendment and may not be exercised in an arbitrary manner so as to result in the suppression of individual rights.

Any question as to the right of a city to require paid union organizers to register before soliciting members for labor unions was answered in 1945, when such a requirement in a Texas law was held to be unconstitutional.¹⁸ Although a state law was involved, the same principle would apply in the case of a municipal ordinance. The court held that such a registration requirement deprives labor union organizers of freedom of speech and assembly, and denies them equal protection of the laws.

Anti-picketing ordinances have been enacted in several cities in recent years.¹⁹ Before such ordinances will be sustained by the courts it must be shown that they tend to preserve peace and promote good order. Thus an ordinance of Los Angeles regulating picketing except in furtherance of a "bona fide strike" was held unconstitutional as in conflict with the equal protection clause of the Fourteenth Amendment. The classification in the ordinance was held to bear no reasonable relation to the object sought, namely,

¹⁶ *Murdock v. Pennsylvania*, 319 U.S. 105, 87 Law. Ed. 827 (1943); *Jones v. Opelika*, 316 U.S. 584 (1942); 319 U.S. 103 (1943).

¹⁷ *Congress of Industrial Organizations v. Hague*, 306 U.S. 684 (1939).

¹⁸ *Thomas v. Collins*, 323 U.S. 516 (1944).

¹⁹ See "Constitutionality of Anti-Picketing Ordinances," 48 *Yale Law Jour.* 308 (Dec., 1938).

the maintenance of peace and order.²⁰ In any case, the municipality must show that the power to enact such ordinances has been conferred upon it by the state.²¹

The Constitution gives Congress power to regulate foreign and interstate commerce. Under this provision municipal ordinances are often attacked as regulations of such commerce.²² The requirement of a license by the city of Sault Ste. Marie, Michigan, as a condition precedent to the operation of a ferry between that city and Canada, was held invalid as a regulation of foreign commerce.²³ A street railway operating between two cities, one in Ohio and the other in Kentucky, separated by the Ohio River, is not subject to regulation by one of the cities. The business has been held to constitute interstate commerce, and its regulation would conflict with the commerce clause.²⁴

The municipal regulation of agents and salesmen from other states is frequently attacked and generally held invalid as a regulation of interstate commerce. A license tax has been held void as applied to a traveling salesman representing a firm in another state.²⁵ In a case before the Supreme Court of the United States in 1925, the validity of a licensing ordinance of Portland, Oregon, was attacked. The salesman in this case accepted a small cash payment which was his compensation. The city took the view that the salesman thereby became a peddler engaged in local trade and that he lost his immunity from state regulation under the commerce clause. The court, in holding the ordinance unconstitutional, said: "We cannot doubt that the ordinance materially burdens interstate commerce and conflicts with the commerce clause. The negotiation

²⁰ *People v. Gidaly*, 93 Pac. (2d) 660 (1939).

²¹ *State v. Borman*, 138 Fla. 149, 189 So. 669 (1939); *City of Yakima v. Gorham*, 94 Pac. (2d) 180 (1939).

²² As to the effect of the grant of power to Congress to regulate interstate commerce upon the power of the states, see J. M. Mathews, *The American Constitutional System*, pp. 264 ff.; C. K. Burdick, *The Law of the American Constitution*, pp. 246-254.

²³ *City of Sault Ste. Marie v. International Transit Co.*, 234 U.S. 333, 58 Law. Ed. 1337 (1914). Also see Charles M. Kneier, "Interstate Ferries and the Commerce Clause," 26 *Mich. Law Rev.* 631 (April, 1928).

²⁴ *South Covington and Cincinnati Street Ry. Co. v. City of Covington*, 238 U.S. 537, 59 Law. Ed. 350 (1915).

²⁵ *Robbins v. Shelby County Taxing Dist.*, 120 U.S. 489, 30 Law. Ed. 694 (1887).

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of sales of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made is interstate commerce."²⁶ The same position was taken in 1946 in a case involving an ordinance of Richmond, Virginia, requiring a license from persons "engaged in business as solicitors."²⁷

The Constitution provides that "no state shall . . . pass any . . . law impairing the obligation of contracts." While used in many types of cases, this provision is used most commonly in connection with the relations between a city and the public utilities operating in its streets. The city grants a franchise to the utility to operate in its streets for a stated period of time, and under specified conditions as to service and rates. The city later passes an ordinance which the company alleges conflicts with its franchise and thus impairs the obligation of contract. Extensive litigation has arisen involving this question.²⁸

Taxes levied by cities have also been attacked under the contract clause. The plaintiff in such cases relies upon some provision of its charter from the state, or its franchise, or other special agreement with the city, under which it claims that it has been promised immunity from certain taxes.²⁹

Municipal action is also subject to certain implied limitations which arise out of the nature of our federal system of government. As a state may not use its power of taxation to embarrass or hinder the operations of the general government, neither may a city do this.³⁰ This principle has been especially troublesome as applied to municipal taxation of federal property. The old concept that the power to tax is the power to destroy is followed, and cities may not levy taxes against federal property, even though they are not discriminatory and are applied to both public and privately owned property.³¹

Action taken by a city will be declared void where it is found to conflict with a treaty. A segregation ordinance of San Francisco

²⁶ *Real Silk Hosiery Mills v. City of Portland*, 268 U.S. 325, 69 Law. Ed. 982 (1925).

²⁷ *Nippert v. City of Richmond*, 327 U.S. 416 (1946).

²⁸ *Harvey Walker, op. cit.*, pp. 67 ff. *J. F. Dillon, op. cit.*, vol. 3, sec. 1233.

²⁹ *Harvey Walker, op. cit.*, pp. 79 ff.

³⁰ *Weston v. City of Charleston*, 2 Peters 449, 7 Law. Ed. 481 (1829).

³¹ See chap. viii for a further consideration of this question.

of 1890 limited the Chinese to a certain section of the city. The United States Circuit Court for California declared this ordinance to be void on the ground that it violated the Burlingame Treaty with China. An ordinance of Seattle provided that only persons who were citizens of the United States would be granted a license to carry on the business of pawnbroker. This ordinance was held void by the Supreme Court of the United States in 1924 on the ground that it conflicted with the treaty of 1911 between the United States and Japan.³²

DELEGATION OF POWERS

The principle of non-delegation of legislative power is applicable to a city council as well as to a state legislature or to Congress. Power conferred upon a city council by state law must be exercised by the council itself if discretion is involved, and authority to act may not be delegated by the council to another agency or to an officer. Power conferred upon the city without specifying the branch or agency by which it is to be exercised is held by the courts to rest in the legislative branch of the city—the council. The duty aspect of the power, rather than the right or authority aspect, is emphasized by the courts. And the duty having been placed upon the council, it cannot shirk its responsibility by delegating to some other agency the authority to act. If, however, the act does not involve the exercise of discretion, but is ministerial in nature, the council may confer the power upon some other agency or officer. In some cases it is difficult to decide whether the power conferred does involve discretion or is merely ministerial in nature.

Many cases have arisen which illustrate the application of the principle of non-delegation of legislative power. Thus when the power to pave streets is conferred upon the city, since discretion is involved, the council must decide which street shall be paved, the kind of pavement to be used, the method of construction (contract or direct city labor), and the time the work is to be done.³³ After

³² Charles M. Kneier, "Discrimination Against Aliens by Municipal Ordinances," 16 *Georgetown Law Jour.* 143 (Feb., 1928).

³³ See *Thomson v. Boonville*, 61 Mo. 282 (1875); *McCrowell v. Bristol*, 89 Va. 652, 16 S.E. 867 (1893); *Richardson v. Heydenfeldt*, 46 Calif. 68 (1873); *Ruggles v. Collier*, 43 Mo. 353 (1869); *Smith v. Duncan*, 77 Ind. 92 (1881).

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these discretionary acts have been performed by the council, the actual laying of the pavement, according to the decisions made, may be delegated to the city engineer or other officers. The carrying out of the plans made by the council is a ministerial act.

STATE LIMITATIONS UPON THE POWER TO LEVY TAXES AND INCUR DEBTS

The raising of money by cities through taxation is not an end within itself but rather a means to an end. Through its power to raise money by taxation the city is able to finance and carry on its various activities. By limiting the tax rate, the state has controlled the amount of money that can be raised by cities and has thus indirectly limited municipal activities. Constitutional and statutory limitation of the amount of debt cities may incur also checks the expansion of municipal activities. Where a large original outlay of money is necessary to undertake an activity, cities have to consider whether this can be done and still be within the state-imposed debt limit. Limitations on the amount of taxes levied and debts incurred will be discussed in subsequent chapters.³⁴

TAXATION FOR A PUBLIC PURPOSE

Another check on municipal activities is the fact that taxes can be levied only for public purposes. Taxation for other than public purposes, even though the municipality is acting under an enabling act, is unconstitutional. This question arises and the attack is made especially in those cases in which the city enters fields of activity that are not strictly governmental but corporate in nature.³⁵

The granting of money to a bridge company to encourage it to locate in a city, the establishment of a manufacturing plant to be run by city officers, the lending of money to landowners whose

³⁴ See chaps. xxix, xxx.

³⁵ See Charles M. Kneier, "Municipal Functions and the Law of Public Purpose," 76 *Univ. of Pa. Law Rev.* 824 (May, 1928); H. L. McBain, "Taxation for a Private Purpose," 29 *Pol. Sci. Quar.* 185 (June, 1914); F. N. Judson, "Public Purposes for Which Taxation Is Justifiable," 17 *Yale Law Jour.* 162 (Jan., 1908); B. P. McAllister, "Public Purpose in Taxation," 18 *Calif. Law Rev.* 137, 241 (Jan., Mar., 1930).

homes have been burned in a great conflagration such as the Boston fire of 1872, have been held to involve the expenditure of money for other than public purposes or objects. It has been held that while a city may acquire and hold such real estate as may be necessary to enable it to carry on its corporate business and to exercise its proper municipal functions, "it is idle to claim that a municipal, corporation can lawfully engage in the business of buying, selling, or dealing generally in real estate, either as principal or broker."³⁶

Though attacked as being taxation for other than a public purpose, the courts have upheld the extension of municipal activity to include the ownership of waterworks, lighting plants, ferries, wharves, markets, fuel yards, ice plants,³⁷ hospitals, golf courses, and telephone systems.³⁸ In 1927 the Supreme Court of the United States held that a city may engage in the sale of gasoline by the operation of a municipal filling station.³⁹

The question arises as to the future of municipal functions or activities from the point of view of the law of public purpose. If a city may engage in the sale of gasoline to its inhabitants, what are the limits beyond which it may not go? A study of the cases involving the question of taxation for other than a public purpose shows the gradual extension of this concept as applied to municipal functions. In such cases the courts have taken what may be termed a liberal or progressive attitude. They have permitted an activity at a later date, even though at an earlier period it was held to be other than a legitimate public purpose. Public purpose as applied to taxation is a changing concept, and the courts have been cognizant of the fact that economic conditions change.⁴⁰

³⁶ *Hayward v. Board of Trustees of Town of Red Cliff*, 20 Colo. 33, 36 Pac. 795 (1894).

³⁷ But compare *Union Ice and Coal Co. v. Town of Ruston*, 135 La. 898, 66 So. 262 (1914); *State v. Orear*, 277 Mo. 303, 210 S.W. 392 (1919).

³⁸ See note in 22 *Columbia Law Rev.* 737 (Dec., 1922).

³⁹ *Standard Oil Co. v. City of Lincoln*, 275 U.S. 504, 48 Sup. Ct. 155 (1927).

⁴⁰ On the question of advertising a city as being a public purpose, see *Loeb v. City of Jacksonville*, 101 Fla. 429, 134 So. 205 (1931); A. T. Deddens, "Power of a City to Appropriate Funds for Advertising Purposes," 5 *Univ. of Cincinnati Law Review* 465 (Nov. 1931); "Note" by C. W. Tooke in 20 *Nat. Mun. Rev.* 542 (Sept., 1931). On the expenditure of public money for radio broadcasting, see 19 *ibid.* 108 (Feb., 1930).

SUMMARY

In a study of the American city it must be borne in mind that it is an agency of limited powers. It may exercise only those powers which have been conferred upon it by the state. In conferring such powers the state legislature is subject to the limitations found in the state and federal Constitutions. Limitations on the taxing and borrowing power of cities have restricted their activities. However, methods have been devised to avoid some of these financial restrictions. The general tendency today seems to be toward the extension of municipal power by constitutional conventions, state legislatures, and the courts through their power of judicial interpretation.

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Municipal Liability

In the performance of the many functions entrusted to them, American cities, acting through their officers and employees, frequently inflict injuries upon individuals. An automobile used by a city department may hit and injure a pedestrian, or a policeman seeking to capture a highwayman fleeing after a robbery may shoot an innocent bystander. Suits are brought against cities to recover damages for such injuries. Such wrongs are known as torts.¹ A consideration of municipal liability is of value in showing the legal responsibilities under which American cities operate in the performance of their functions; furthermore, the reasoning followed by the courts in laying down the rules of liability indicates more clearly the city's position in our governmental system.

LIABILITY IN TORT

It is a fundamental principle of American law that a state may not be sued without its own consent. It is sometimes said that this principle is based upon the old theory that the king can do no wrong. This has been transferred over to American law and transformed, perhaps erroneously, into the theory that the state can do no wrong.² Another basis for this principle of the immunity of the

¹ The word torts is used to describe that branch of the law which treats of the redress of injuries that neither are crimes nor arise from a breach of contract. See Bouvier's *Law Dictionary*, vol. 3, p. 3285.

² For an excellent discussion of the origin of the doctrine, see E. M. Borchard, "Governmental Responsibility in Tort," 36 *Yale Law Jour.* 1, 757, 1039 (1926-1927). Also see H. Barry, "The King Can Do No Wrong," 11 *Va. Law Rev.* 349 (Mar., 1925); John W. Burgess, *Political Science and Constitutional Law*, p. 57; D. A. Jones, *Negligence of Municipal Corporations*; W. W. Williams, *The Liability of Municipal Corporations for Tort*. Cf. John M. Zane, "A Legal Heresy," 13 *Ill. Law Rev.* 431 (1918-1919).

state from suit is that the authority which makes the law cannot be subject to the law, and therefore cannot be sued in tort. As stated by Justice Holmes, "A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."³ According to this view, the state cannot be sued because no tort or wrong has been committed, "for a tort is a tort in a legal sense only because the law has made it so."⁴

For determining the liability of the city in tort, its activities have been classified as governmental, political or public, and corporate, proprietary, or private. The immunity of the state from liability in tort has been extended to the city when the latter is acting in a governmental capacity. In such cases the city is held to be acting as an arm or agent of the state. The act is an act of the state, the municipality being a mere creation of the state, established so that the latter may more adequately carry on the work of governing the people. As the state is immune from suit without its consent, it follows that its governmental agency, the municipality, shares this immunity when acting in a governmental capacity.

Another legal theory upon which courts have justified the non-suability of the state is that of public policy. The argument advanced is that to make the state subject to suit and answerable in tort to its citizens might interfere with the performance of its functions. The individual must yield to the welfare of the whole community and suffer injuries without right of redress lest the state be hindered in its work. Liability in tort for governmental functions, it is held, would tend to retard the agents of the city in the performance of their duties for fear of suit being brought against the city.⁵ Cities could not properly perform their functions if they were liable for the torts of their employees. The Supreme Court of Illinois expressed this view well when, in considering the liability of a city for the torts of its fire department, it said: "It would assuredly become too burthensome to be borne by the people of any large city, where loss by fire is annually counted by the hundreds of thousands,

³ *Kawananakoa v. Polyblank*, 205 U.S. 349, 51 Law. Ed. 834 (1907).

⁴ *The Western Maid*, 257 U.S. 419, 66 Law. Ed. 299 (1922).

⁵ D. W. Doddridge, "Distinction Between Governmental and Proprietary Functions of Municipal Corporations," 23 *Mich. Law Rev.* 325 (Feb., 1925).

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if not by the millions. . . . Sound public policy would forbid it if it were not prohibited by authority."⁶ The Supreme Court of Indiana has taken the view that "both reason and the soundest public policy forbid that such a liability should be imposed."⁷

The question arises as to which functions performed by the city are governmental in nature and which are corporate or proprietary. The question of municipal liability in tort is hopelessly confused on this point. It is necessary to admit that it is impossible, by way of definition, to state any rule sufficiently exact to be of any practical value in determining whether a function is governmental or corporate.⁸ As expressed by the Supreme Court of the United States, "The basis of distinction is difficult to state, and there is no established rule for the determination of what belongs to the one or the other class."⁹ The origin of the distinction has been well described as "judicial legislation imperceptibly evolved in the process of adjudication."

In determining, however, whether a function shall be classified as governmental or corporate, certain principles or tests have been evolved by the courts. Among these is the question whether the duty has been voluntarily assumed by the municipality under legislative permission or whether it has been charged upon it as an obligation. Another is whether pay is received from customers, as in the case of municipally owned utilities. If pay is received, such functions are usually classed as corporate or proprietary. But the receipt of an incidental fee or charge, as in the case of a park, golf course, or swimming pool, has been held not to make the function proprietary.¹⁰ Probably the most significant test is whether the function relates to matters of purely local concern or is of general interest to the state at large.¹¹

⁶ *Wilcox v. Chicago*, 107 Ill. 334 (1883).

⁷ *Brinkmeyer v. Evansville*, 29 Ind. 187 (1867).

⁸ J. F. Dillon, *Commentaries on the Law of Municipal Corporations*, 5th ed., vol. 4, sec. 1625.

⁹ *City of Trenton v. New Jersey*, 262 U.S. 182, 67 Law. Ed. 937 (1923).

¹⁰ *Hannon v. Waterbury*, 106 Conn. 13, 136 Atl. 876 (1927); but if a substantial amount of revenue is received, the function becomes proprietary. *Oliver v. Worcester*, 102 Mass. 489 (1869); *Chafor v. Long Beach*, 174 Cal. 478, 163 Pac. 670 (1917); 18 *Nat. Mun. Rev.* 410 (June, 1929). See also *Anderson v. Portland*, 154 Atl. 572 (1931); *Bell v. Pittsburgh*, 297 Pa. 185, 146 Atl. 567 (1929).

¹¹ C. B. Elliott, *The Principles of the Law of Municipal Corporations*, chap.

Following these principles, the courts are in quite general agreement in holding police, fire, health, the care of the poor, and the maintenance of schools to be governmental activities. The city is not liable for unlawful arrest or assault by a policeman, for failure to prevent or put out a fire, for injuries received from being hit by a fire truck in going to or returning from a fire, or for injuries suffered on account of the negligence of city employees in either the health or the charity departments. It should be noted, however, that in such cases the officer or employee is personally liable where negligence can be proved.

Certain other activities are quite generally accepted as corporate or proprietary, and the city is held liable for torts committed by its employees while engaged in performing them. As pointed out above, in the case of these activities either the city derives a substantial revenue from them or they are carried on primarily for the benefit of its inhabitants. Among the activities which are generally accepted by the courts as corporate are the furnishing of water, light, power, gas, and transportation by municipally owned utilities, and the management of municipal property from which revenue is derived, such as markets and wharves.

There is another group of functions in which the courts are not in agreement as to whether they are governmental or proprietary. This is illustrated by the maintenance of parks, with respect to which there is great disagreement on the part of the courts. The courts of some states reason that the maintenance of parks is a health activity and consequently governmental; others say that parks should be classed with streets and held to be corporate; still others would draw an analogy with waterworks on the basis of health; and it has even been suggested that the walks and drives be treated as streets are, and that the other parts of the park be subject to different principles. The general rule seems to be that parks are governmental and that the city will not be held liable for torts. There is, however, a strong minority view.¹²

xxiv; C. W. Tooke, "The Extension of Municipal Liability in Tort," 19 *Va. Law Rev.* 97 (Dec., 1931); E. M. Borchard, "Government Liability in Tort," 34 *Yale Law Jour.* 129 (Dec., 1924); A. J. Harno, "Tort Immunity of Municipal Corporations," 4 *Ill. Law Quar.* 28 (Dec., 1921).

¹² C. B. Elliott, *op. cit.*, chap. xxv, sec. 384; G. W. Payne, "Are Cities and Towns Liable for Negligence in the Management of Public Parks?" 66 *Central*

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Sewers and drains also occupy this borderline field relative to tort. In determining whether they shall be constructed, and in selecting the plan, the city acts in a discretionary quasi-judicial capacity, and no liability will lie. But for the actual construction and the later maintenance, the city is generally held to be liable where damage is caused by negligence. In many cases this liability is based on the fact that the city is maintaining a nuisance, and for such action the city is liable for damages, even when acting in a governmental capacity. Some jurisdictions, however, hold sewers to be a governmental function; hence the city is not liable.¹³

Another function falling in this borderline field is the construction and maintenance of streets. While by the decided weight of judicial authority counties and townships are not liable for the condition of highways, the general rule is that cities are liable in such cases. In the New England states, however, this function is held to be governmental, and consequently there is no liability for their condition. The general rule is that in cleaning the streets a city is acting in a governmental capacity, this being considered a health activity. But in Minnesota the flushing of the streets has been held to be proprietary.¹⁴ The Supreme Court of Illinois, in holding the city of Chicago liable in such cases, stated that the cases holding the contrary were more numerous, but declared that to hold them liable is supported by "better reason" and "is more just in its operation than the other view."¹⁵

Other functions in this borderline field upon which the courts are not in agreement as to whether they are corporate or governmental are the maintenance of swimming pools¹⁶ and airports.¹⁷

Many tort cases arise from injuries received by persons as the

Law Jour. 463 (June, 1908); C. W. Tooke, "Liability of City for Injuries Due to Negligence in the Care of Public Parks," 15 *Nat. Mun. Rev.* 302 (May, 1926); 16 *ibid.* 476 (July, 1927); 18 *ibid.* 641 (Oct., 1929).

¹³ E. McQuillin, *The Law of Municipal Corporations*, 2nd ed. vol. 6, chap. liii; C. B. Elliott, *op. cit.*, chap. xxv.

¹⁴ *McLeod v. Duluth*, 174 Minn. 184, 218 N.W. 892 (1928).

¹⁵ *Roumbos v. City of Chicago*, 332 Ill. 70, 163 N.E. 361 (1928).

¹⁶ Compare *Norberg v. City of Watertown*, 53 S.D. 600, 221 N.W. 700 (1928), and *Warren v. City of Topeka*, 125 Kan. 524, 265 Pac. 78 (1928).

¹⁷ H. J. Freeman, "Municipal Liability in Construction and Operation of an Airport," 19 *Nat. Mun. Rev.* 318 (May, 1930); 12 *Pub. Management* 372 (June, 1930); 21 *Nat. Mun. Rev.* 330 (May, 1932).

result of the negligent operation of motor vehicles by municipal employees.¹⁸ Motor vehicles are used in most of the departments of the city, and their operation frequently results in injuries to private individuals. The same general principle is applied here as elsewhere in the tort field, the liability of the city depending upon whether the car was being used in the performance of a governmental or a corporate function. The city would be liable if the car was operated by an employee of the water department; it would not be liable if the injury was the result of negligent operation by an employee of the police department. Several state legislatures, however, have by statute imposed liability upon cities for the negligent acts of their employees while operating motor vehicles, regardless of the fact that the car was being used at the time in the performance of a governmental function.

A few cases will be noted in order to indicate the difficulty, if not the absurdity, of classifying functions as corporate or governmental for determining a city's liability in tort. Although the maintenance of the streets in a safe condition is proprietary, the regulation of traffic is governmental. A pedestrian who tripped on an oval iron marker placed in the street to indicate a safety zone for street-car patrons could not recover.¹⁹ Had he tripped on a hole or defect in the street, the decision would have been otherwise. The Supreme Court of Florida has held that a city is not liable for damages from injuries received in a traffic accident caused by the failure of a traffic light to function. The duty to keep traffic lights in a safe condition was held to be a governmental function.²⁰

A municipal light plant is proprietary when selling current to inhabitants, but it is governmental when furnishing current for street lighting. In a case before the Supreme Court of Michigan, the plaintiff's husband lost his life while working for the city as a lineman. The current used by the city for street lighting was direct; that for sale was alternating. The court permitted recovery in this case when it found that the deceased was killed by alternating

¹⁸ Wilbur H. Van Dine, "Municipal Liability for Motor Vehicle Torts," 10 *Temple Law Quar.* 75 (Nov., 1935).

¹⁹ *City and Co. of Denver v. Foster*, 89 Colo. 246, 1 Pac. (2d) 922 (1931). On the liability of the city for installing safety markers and traffic signals, see 18 *Nat. Mun. Rev.* 331 (May, 1929).

²⁰ *Avey v. City of West Palm Beach*, 152 Fla. 717, 12 So. (2d) 881 (1943).

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current and the function was thus proprietary.²¹ Had he come into contact with a defective wire carrying current for street lighting, the city would have escaped liability on the ground that this was a governmental function.

In a case before the Court of Appeals of Georgia in 1925, the plaintiff was injured by stepping into a cutoff or hole left unguarded by the employees of the water department of the city. The water plant was operated by the city "in its private capacity and for profit and gain"; but the court held that the action could not be maintained, as the cutoff from which the injury resulted was used to control the flow of water into a pool in the park; since this was for "the benefit of the general public, without any pretense of private gain to the municipality," it was governmental and there was no liability.²²

The difficulty of making the tort liability of a city depend upon whether the city is acting in a governmental or a proprietary capacity is well illustrated by cases of injuries arising in the use of public buildings. Several cities rent part of the city building, or they use it for other than governmental functions. The building is used partly for governmental and partly for proprietary purposes. The usual rule in such cases seems to be that the city's liability depends upon the use which the injured individual was making of the building at the time of the injury.²³ The Supreme Court of Pennsylvania, however, has taken the view that in such a case the building will be treated as if used throughout in a proprietary capacity.²⁴

As has been pointed out above, the city is liable for its torts only when performing a corporate function. It should be noted that such liability attaches only in the case of negligence on the part of the city. The test applied by the courts is whether reasonable care and diligence were exercised to prevent the injury for which damages are sought. The general rule is that cities are liable for the condition of their streets. If, however, because of excessive heat a pavement

²¹ *Hodgins v. Bay City*, 156 Mich. 687, 121 N.W. 274 (1909).

²² *Autrey v. City of Augusta*, 33 Ga. App. 757, 127 S.E. 796 (1925). Also see *Denver v. Maurer*, 47 Colo. 209, 106 Pac. 875 (1910); 15 *Nat. Mun. Rev.* 302 (May, 1926).

²³ C. W. Tooke, "The Extension of Municipal Liability in Tort," pp. 97, 103.

²⁴ *Bell v. Pittsburgh*, 297 Pa. 185, 146 Atl. 567 (1929).

should buckle or explode, resulting in the wrecking of a car traveling over the street, the owner could not recover. There would be no negligence on the part of the city because the accident could not be attributed to its failure to exercise reasonable care and diligence. Cities are generally liable for the unsafe condition of their streets resulting from snow and ice. Obviously it would be unfair and inequitable to hold a city liable in such cases if sufficient time had not elapsed after the snow had fallen or the ice formed for the municipal employees to put the streets in safe condition. It should be kept in mind that the question involves not only the nature of the function (governmental or corporate) but whether the city has exercised reasonable care. Negligence must be established before the city will be held liable even in the performance of corporate functions.

The preceding discussion has been concerned with the liability of the municipal corporation. The fact that the city is not liable for its torts when acting in a governmental capacity does not mean that there can be no redress for the wrong suffered. The municipal official or employee is liable as an individual for his torts. A policeman may be tried and convicted for a crime if, while on duty, he shoots and kills a person without legal justification. And he may be held liable for damages in a civil suit for unwarranted injury suffered at his hands. Likewise the driver of a city automobile may be held individually liable for his negligence if it results in injury, even though the car was being used at the time in the performance of a governmental function. Law enforcement is clearly a governmental function, and for torts in this field cities are not liable. But the city manager and the chief of police of Oakland, California, were held liable, in a case decided by the Supreme Court of California in 1943, for the death of a prisoner in jail who was fatally beaten by police officers. The court based its decision on the failure of these two officials to suspend police officers who were known to be incompetent.²⁵

²⁵ *Fernelius v. Pierce*, 22 Calif. (2d) 226, 138 Pac. (2d) 12 (1943).

LIABILITY FOR THE WAY IN WHICH THE ORDINANCE-
MAKING POWER IS USED

A city's failure to pass an ordinance is the omission of a governmental duty for which the city is not liable. When an ordinance has been passed, no liability attaches to the city for injuries received by an individual because of failure to enforce it. If the city fails to prohibit coasting in the street, riding bicycles on the walks, or firing guns, no liability will lie against it for injuries resulting from such non-action. Neither will it be liable where such ordinances have been enacted and the injury results from failure to enforce them.²⁶

Deciding whether action shall be taken is a question of discretion, and for errors in judgment or discretion the city is not liable. It is ministerial acts, the carrying out of policies, for which the city incurs liability. And as stated above, the city is not liable for its ministerial acts in the exercise of governmental functions, but it is liable in the exercise of those which are of a corporate nature. The determination of whether a sidewalk should be constructed on a certain street is a question of discretion, and the city is not liable for errors of judgment in failing to construct such a walk. A person injured on this street could not collect damages from the city for its failure to construct the sidewalk. If, however, in the exercise of its discretion the city decides to build a sidewalk, the duty to keep it in reasonable repair is mandatory, and for failure to do so it is liable in damages. After it has been constructed, a person who suffered an injury because of its being out of repair could collect damages from the city.

LIABILITY FOR *ULTRA VIRES* ACTS

The question of tort liability often arises in connection with unauthorized acts of cities.²⁷ Can a city be held liable in tort where the act causing the injury is beyond the scope of the power con-

²⁶ E. McQuillin, *op. cit.*, vol. 6, sec. 2802. Also see *Marth v. City of Kingfisher*, 22 Okla. 602, 98 Pac. 436 (1908).

²⁷ On this question, see P. L. Gettys, "Municipal Liability for Ultra Vires Tortious Acts," 8 *Temple Law Quar.* 153 (Jan., 1934).

ferred upon it by the state? According to the courts, the city is not liable in such cases. They take the view that "what a municipality has no power to do it has not done merely because it tried to do it."²⁸ The principle may be illustrated by a case which arose in the State of Washington in 1926.²⁹ The city of Seattle was authorized to operate a street railway, but in doing so it inaugurated a motor-bus route in a section where it was not practicable to extend the railway system. A person who was injured because of the negligence of the driver of a bus sued the city for damages. The court held the operation of a bus to be an *ultra vires* act since the statute which authorized the operation of a street railway was construed as not including motor busses. The operation of motor busses was thus beyond the power of the city, and what it could not do legally it had not done at all as far as tort liability was concerned.

UNSATISFACTORY CONDITION OF THE LAW OF TORT LIABILITY

The question arises as to whether the law of torts as applied to municipal corporations should not be revised. The doctrine of governmental and corporate functions has been described as a "maze of shadowy distinctions"³⁰ which has been "more productive of litigation than of justice."³¹ The Kansas City Court of Appeals stated the situation bluntly but frankly when it said: "The reasons given for liability and for non-liability of municipal corporations, we admit, are not logical or consistent. Some of the reasons given for non-liability apply just as forcibly to cases where liability is asserted, and *vice versa*."³² A person who is injured by a fire truck or a police car may be injured as seriously as one who is run down by a truck used by the water or light department. With the proprietary and governmental distinction, however, recovery could be had in one case but not in the other. "The reasons ascribed for the

²⁸ Kennedy v. Nevada, 222 Mo. App. 459, 281 S.W. 56 (1926). Also see J. F. Dillon, *op. cit.*, vol. 4, secs. 1647-1648; C. B. Elliott, *op. cit.*, chap. xxiv.

²⁹ Woodward v. City of Seattle, 140 Wash. 83, 248 Pac. 73 (1926).

³⁰ Irvine v. Greenwood, 89 S.C. 511, 72 S.E. 228 (1911).

³¹ D. W. Doddridge, *op. cit.*

³² Young v. Metropolitan Street Ry. Co., 126 Mo. App. 1, 103 S.W. 135 (1907).

doctrine of non-liability in the performance of governmental functions are diverse, unsound and obsolete," in the opinion of Murray Seasongood, former mayor of Cincinnati.³³ In a report made in 1938 by the committee on tort liability of the National Institute of Municipal Law Officers, the doctrine of tort liability was criticized as follows:

There is no reason that a Fire Department should operate its fire trucks in a reckless, careless and negligent manner, injure persons and damage property and then hide behind the cloak of governmental function. This puts a premium on negligence of municipal officers and agents. There is no reason why a Fire Department, on its way to a fire, where the damage may be very slight, should endanger the lives of many citizens. . . . It is believed that the Tort Liability of a Municipality in so far as the general public is concerned should be no different than that of any private individual.³⁴

After a comprehensive study of the actual operation of tort liability in Virginia cities by the Bureau of Public Administration at the University of Virginia, George A. Warp took the following position: "Discredited in theory and unwarranted in fact, the arbitrary, absurd, and unjust governmental-proprietary rule should be eliminated from municipal law. Liability should be made to depend not upon the nature of the function but upon the nature of the act. If the act is such that a private corporation would be liable, then a municipal corporation should be liable, too, regardless of the nature of the function being performed."³⁵ There are, however, some persons who defend the present doctrine as to municipal liability in tort and point to the difficulties of opening wide the doors of liability in this field. The number of claims and the burden on the taxpayer would be so great that the change would be unwise, according to advocates or defenders of the present rule.³⁶

Injuries to individuals while the city is engaged in governmental

³³ Murray Seasongood, "Municipal Corporations: Objections to the Governmental or Proprietary Test," 22 *Va. Law Rev.* 910 (June, 1936).

³⁴ "Municipalities and the Law in Action," National Institute of Municipal Law Officers, 1938, p. 175.

³⁵ George A. Warp, "Can the 'King' Do No Wrong?" 31 *Nat. Mun. Rev.* 311 (June, 1942).

³⁶ See Philip Nichols' criticism of George A. Warp's view, quoted above, in 31 *Nat. Mun. Rev.* 550 (Nov., 1942).

functions are certain to occur. With the concentration of population in cities and the assumption of new functions, such cases will become more numerous. It seems as if greater justice would result if the losses from injuries were spread over society instead of being borne by individuals. Such a system should also be effective in causing the electorate to demand that their municipal officials be more careful in the selection of employees. Many of the cases dealing with municipal liability in tort show clearly that persons who were obviously unfit have been appointed to positions as policemen and firemen. If the city had to pay for the incompetence of such employees through liability in tort, this might have some effect upon the type appointed. An administration which burdened the city with the costs of injuries caused by the appointment of political, inefficient, and unfit employees might expect this to be a factor in its approval or disapproval by the electorate at the next election. Under a system in which there is no clear appreciation of what this system costs, the electorate remains apathetic and indifferent.

This change in the rule regarding municipal liability may be secured in part by the courts classifying municipal functions as proprietary which were formerly treated as governmental. In 1919 the Supreme Court of Ohio held the operation of a fire department to be ministerial and proprietary, and the city liable for negligence in its operation.³⁷ Three years later, however, the court held a city not liable for the torts of the police department and expressly overruled the 1919 case just referred to in which a city was held liable for the acts of its fire department on the grounds that the function was proprietary. The court stated in the 1922 case that there was no difference in principle between liability for police and for fire departments and that both were governmental.³⁸

The Supreme Court of Florida in a decision handed down in 1922 held a city liable for injuries to an individual by a fire truck. The court stated that the commission form of government was supported "on the theory that a city's functions have become more and more ministerial, in that its duties consist largely, if not entirely in the management of public utilities such as waterworks and sewerage systems, electric lighting and power plants, gas plants, tele-

³⁷ *Fowler v. City of Cleveland*, 100 Ohio St. 158, 126 N.E. 72 (1919).

³⁸ *Aldrich v. Youngstown*, 106 Ohio St. 342, 140 N.E. 164 (1922).

phones and street railways, all properties, not of the state, but of the people of the community or city, which are managed for the financial advantage and profit of the city." The court went on to say that it requires little stretching of this doctrine to arrive at the conclusion that "no municipal function is governmental, a city is not a political subdivision of the state, not a government but purely a business, commercial, proprietary management of local public interests."³⁹ The Florida court has refused to revert to the orthodox view of tort liability as was done by the Supreme Court of Ohio.⁴⁰

These decisions by the supreme courts of two states indicate one method of remedying the situation relative to the tort liability of cities. The courts may frankly abandon the rule of immunity in tort of municipal corporations for the negligence of their employees when performing governmental functions. This method seems to offer only slight hope of changing the law. The courts of most states will agree with the Supreme Court of Wisconsin: "If it be desirable not to exempt municipalities from liability for the negligence of their officers and servants while acting in a governmental capacity such action is for the legislature. This court cannot change the established law as to such exemption."⁴¹ The same view has been expressed by the Supreme Court of Kansas, as follows: "If the doctrine of state immunity in tort survives by virtue of antiquity alone, is an historical anachronism, manifests an inefficient public policy and works injustice to everybody concerned, . . . the Legislature should abrogate it. But the Legislature must make the change in policy, not the courts."⁴²

Legislative action seems to offer the greatest hope of remedying this unsatisfactory situation. On the basis of the argument used to give the city immunity from tort liability when performing governmental functions, such action would mean that the state was now

³⁹ Kaufman v. Tallahassee, 84 Fla. 634, 94 So. 697 (1922).

⁴⁰ Maxwell v. Miami, 87 Fla. 107, 100 So. 147 (1924); Tallahassee v. Kaufman, 87 Fla. 119, 100 So. 150 (1924); West Palm Beach v. Grimmer, 102 Fla. 680, 137 So. 385 (1931); Wolfe v. Miami, 103 Fla. 774, 137 So. 892 (1931).

⁴¹ Erickson v. West Salem, 205 Wis. 107, 236 N.W. 579 (1931).

⁴² McGraw v. Rural High School District, 120 Kan. 413, 243 Pac. 1038 (1926). There has, however, been some tendency on the part of the courts to extend the liability of municipalities for tort; see W. J. Deem, "Municipal Liability in Tort," 28 *Georgetown Law Jour.* 526 (Jan., 1940).

voluntarily subjecting itself, and its agent, to suit in this type of case. Statutes making cities liable for certain torts even in the governmental field have been enacted in several states. Cities are liable for mob violence by statutes enacted in over 20 states;⁴³ in the absence of such a statute a city would be exempt from liability on the ground that law enforcement is a governmental function.⁴⁴ The Illinois statute quoted below is illustrative of those that have been enacted in several states, making cities liable for torts in one type of case where the common-law rule of non-liability would apply in the absence of such a statute. It provides that:

In case any injury to the person or property of another is caused by the negligent operation of a motor vehicle by a member of a municipal fire department while such member is engaged in the performance of his duties as fireman, and without the contributory negligence of such injured person or the owner, the municipality in whose behalf such member of such fire department is performing such duties shall be liable for such injury; provided, that in no case shall a member of a municipal fire department be liable in damages for any injury to the person or property of another caused by him while operating a motor vehicle while engaged in the performance of his duties as fireman.⁴⁵

It will be noted that this statute not only makes the city liable but specifically exempts the employee from personal liability.

The question arises as to whether a city itself might waive its tort immunity in the governmental field and assume liability for the negligent acts of its employees. Two attacks might be made upon such action: (1) Under the principle of Dillon's rule would such action be within the power of the city? (2) Would such action constitute a pure gift of public moneys to a private person? In 1927 the Municipal Assembly of New York City enacted an ordinance authorizing the Board of Estimate to make an award of damages to innocent bystanders injured by police officers. The Court of Appeals of New York upheld an award of \$6740 by the Board of Estimate to an

⁴³ See C. W. Tooke, "The Extension of Municipal Liability in Tort," pp. 97, 103, for statutes extending the liability of the city in tort. Also see 18 *Nat. Mun. Rev.* 103 (Feb., 1929); 11 *Pub. Management* 625 (Oct., 1929).

⁴⁴ For the opposition of municipal officials to such extension, see Hamilton Ward, "Municipal Liability," *Twenty-First Annual Conference of Mayors and Other Municipal Officials of New York*, 1930, p. 89.

⁴⁵ *Ill. Rev. Stat.*, 1939, chap lxx, sec. 9.

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individual who was struck by a stray bullet from the gun of a policeman engaged in pursuing highwaymen fleeing from a holdup.⁴⁶ The city was held to have such power under the constitution and laws of the state, and the assumption of such liability was held not to constitute a gift or gratuity to an injured person, but the legitimate recognition of an equitable claim. It should be noted, however, that the case arose subsequent to the adoption of constitutional home rule in New York in 1923. In a non-home-rule state the question of the existence of the power would present more difficulties.

The greatest objection to extending the scope of municipal liability in tort is that juries will return verdicts which are unreasonably high, feeling that the government can easily pay and not realizing that it is the taxpayer's dollar that must meet the bill. This same philosophy is often seen in damage cases resulting from automobile accidents when the defendant carries indemnity insurance. The latter fact often weighs more heavily with the jury than the merits of the case, and they "stick" the insurance company. Many jurors seem to have the same feeling or philosophy when the government is involved.

This situation might be met by the creation of administrative courts, as has been done in France and certain other European countries.⁴⁷ In France, cities are responsible in all cases in which damages result from the negligence of their officials and employees. The action, however, must be brought in a special administrative court. The result in that country seems to be entirely satisfactory. As one authority says: "It can now be said without possibility of contradiction that there is no other country in which the rights of private individuals are so well protected against the arbitrariness, the abuses, and the illegal conduct of the administrative authorities, and where people are so sure of receiving reparation for injuries sustained on account of such conduct."⁴⁸

⁴⁶ *Evans v. Berry*, City Comptroller, 262 N.Y. 61, 186 N.E. 203 (1933). For a discussion of the case, see 33 *Mich. Law. Rev.* 131 (Nov., 1934); 42 *Yale Law Jour.* 241 (Dec., 1932).

⁴⁷ It might also be met by abolishing juries in such cases. In some states this would require a constitutional amendment.

⁴⁸ James W. Garner, "French Administrative Law," 33 *Yale Law Jour.* 599 (Apr., 1924). Also see Leon Duguit, "The French Administrative Courts," 29 *Pol. Sci. Quar.* 385 (Sept., 1914); Leon Duguit, *Law in the Modern State*, chap. vii.

The administrative court principle not only would have the advantage of protecting the city against unreasonable jury verdicts, but would provide a just and equitable method of meeting many claims which should be met but are not under the present plan. Undoubtedly there are many small claimants who should recover damages but do not because legal procedures are so cumbersome. The administrative tribunal in the workmen's compensation field has demonstrated its advantages over the courts in settling claims with equity and justice. Many just tort claims against cities never reach the trial stage—the amount is too small to justify the claimant in proceeding according to the required legal processes of the courts. An administrative court should be of distinct advantage in this type of case.

Such a plan might be worked out for our cities. This principle has been applied by the federal government in the creation of the Court of Claims. It should be noted, however, that in England, where the municipal corporation is liable, with a few exceptions, for the torts of its employees and officials, such cases are tried in the regular courts. The experience there does not seem to have resulted in unreasonable and unjust verdicts against municipal corporations.⁴⁹

ADMINISTRATION OF TORT LIABILITY CASES

When cities are sued in tort, it is the responsibility of the city attorney to prepare the case and to represent the city in court. Cities often avoid legal action in tort cases by agreeing to settle cases out of court. This is usually done by the council, but only on the recommendation of the city attorney. Where legal liability is clear, this would appear to be a desirable policy. If, however, the claim has only a nuisance value, the better practice would be to force the claimant into court rather than to settle even for a small sum.

Recent studies made in a few cities indicate that many tort claims against cities never reach trial.⁵⁰ Some are settled outside of court,

⁴⁹ See G. E. Robinson, *Public Authorities and Legal Liability*; W. B. Munro, *Government of European Cities*, pp. 44-47.

⁵⁰ These studies have been made by the Committee on Public Administration of the Social Science Research Council, with the cooperation of the Institute of Municipal Law Officers, the American Municipal Association, and a Committee of the Municipal Law Section of the American Bar Association. The

payment being made by the city without the injured party being required to resort to the courts. In Boston, approximately 80 per cent of all claims filed with the city are rejected. Some of the persons whose claims are rejected then resort to the courts. In Los Angeles, 61 per cent of the claims filed are rejected and 31 per cent of these claimants resort to the courts; in Medford, Massachusetts, 61 per cent are rejected and 38 per cent of these go to the courts; in Austin, Texas, 51 per cent are rejected and 29 per cent resort to legal action.⁵¹ In the study of tort liability in Virginia cities, it was found that 60 per cent of the claims that were filed were rejected and then dropped by the claimant, 24 per cent were settled, and only 16 per cent went to the courts.⁵² Some cases are undoubtedly dropped because they have no merit. Others are probably dropped because the amount involved is small and the claimant is unwilling to resort to judicial action. The time and cost are such that he prefers to suffer an injustice rather than to sue in the courts. As pointed out in the preceding section, an administrative court would appear to be advantageous in this type of case.

The percentage of persons who succeed in recovering damages when they resort to the courts in tort cases varies.⁵³ In Boston, it is 40 per cent; Los Angeles, 28 per cent; Chicago, 40 per cent; Austin, Texas, 38 per cent; and Medford, Massachusetts, 61 per cent. In the Virginia study, as pointed out above, only 16 per cent of the tort claims went to the courts. And of these, 20 per cent were settled after suit had been filed, 23 per cent were dismissed, 40 per cent resulted in judgments for the municipality, and only 17 per cent resulted in judgment for the claimant.

Tort liability administration is an important problem in American cities. The legal department must be alert to prevent the payment of unjust claims. When such cases are brought to the courts, the

findings of these studies, especially the one in Boston, have been summarized in Edgar Fuller and A. J. Casner, "Municipal Tort Liability in Operation," 54 *Harvard Law Rev.* 437 (Jan., 1941). The discussion which follows is based largely on that study. For the Los Angeles study, see L. T. David and J. F. Feldmeier, *The Administration of Public Tort Liability in Los Angeles 1934-1938* (1939).

⁵¹ Edgar Fuller and A. J. Casner, *op. cit.*

⁵² See footnote 35, *supra*.

⁵³ Edgar Fuller and A. J. Casner, *op. cit.*

city's side of the controversy must be presented effectively. Justice should be had in all cases; but this does not mean that all tort claims which are presented should be paid. Whether only just claims are paid will depend in part at least upon the effectiveness of the city's legal department.

San Diego, California, carries public liability and property damage insurance to cover the liability both of the city and of all its officials and employees acting within the scope of their employment. The budget officer of that city says that the purchase of the insurance "relieved the city of the expense of investigating and defending claims and relieved the city council of possible pressure to approve payment of unjustifiable claims."⁵⁴ Another advantage is that it relieves the city manager, department heads, and members of the police force who were subject to serious personal liability hazards from damage suits which the city could not legally pay; under the state law it could legally purchase insurance to cover the risk.

NOTICES OF TORT CLAIMS

In some states, persons having tort claims against a city are required to file, within a specified time after the injury occurred (usually 30, 60, or 90 days), a written statement with the mayor or city attorney, describing the nature of the claim and the time and place at which the injury was received. The object of such a requirement is to prevent trumped-up claims against municipalities by permitting the city to make a thorough and complete investigation before evidence can be destroyed or the facts surrounding the accident forgotten. As stated by the Supreme Judicial Court of Maine, "The main object of the notice is, that the town may have an early opportunity of investigating the cause of an injury and the condition of the person injured, before changes may occur essentially affecting such proof of the facts as may be desirable for the town to possess."⁵⁵ If in the future there is an extension of municipal liability for tort, it would seem advisable to provide that the city be notified of the

⁵⁴ Samuel M. Roberts, "City Buys Liability Insurance from Lowest Bidder," 27 *Pub. Management* 86 (Mar., 1945).

⁵⁵ *Blackington v. Rockland*, 66 Me. 332 (1877). See also *Marino v. Town of East Haven*, 120 Conn. 577 (1935).

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injuries received so as to protect it from fraudulent suits. The following statute of Illinois is illustrative of those requiring the filing of notice of intent to sue the city for personal injuries:

Any person who is about to bring any action or suit at law in any court against any incorporated city, village or town for damages on account of any personal injury shall, within six months from the date of injury, or when the cause of action accrued, either by himself, agent or attorney, file in the office of the city attorney (if there is a city attorney, and also in the office of the city clerk) a statement in writing, signed by such person, his agent or attorney, giving the name of the person to whom such cause of action has accrued, the name and residence of person injured, the date and about the hour of the accident, the place or location where such accident occurred and the name and address of the attending physician (if any).

Under such statutes the courts are frequently called upon to decide whether the notice given is sufficient to comply with the statute. The notice of the cause of injury may be too general, such as "a depression in the street," or it may be oral when the statute requires that it be in writing.⁵⁶

MUNICIPAL LIABILITY ON CONTRACTS⁵⁷

The American city is liable upon its contracts, if they are within the scope of its power, to the same degree that a private corporation or person is liable. No distinction is made here as is done in the field of torts, on the basis of corporate or governmental functions. Where, however, a contract is truly *ultra vires*, being wholly outside the scope of the corporate power of the city, there can be no

⁵⁶ See *Triety v. City of Louisville*, 292 Ky., 654, 167 S.W. (2d) 860 (1934); *Ballinger v. City of Harlan*, 294 Ky. 72, 170 S.W. (2d) 912 (1943).

⁵⁷ C. W. Tooke, "Quasi-Contractual Liability of Municipal Corporations," 47 *Harvard Law Rev.* 1143 (May, 1934); L. M. Greene, "Quasi-Contractual Liability of Municipal Corporations," 10 *N.Y. Univ. Law Quar. Rev.* 64 (Sept., 1932); J. C. Knowlton, "The Quasi-Contractual Obligations of Municipal Corporations," 9 *Mich. Law Rev.* 671 (June, 1911); E. McQuillin, *op. cit.*, vol. 3, chap. xxix, and vol. 6, sec. 2652. The following case notes will be helpful in a consideration of this question: 5 *George Washington Law Rev.* 913 (May, 1937); 36 *Mich. Law Rev.* 855 (Mar., 1938); 20 *Minn. Law Rev.* 564 (Apr., 1936); 31 *Yale Law Jour.* 779 (May, 1922); 22 *Va. Law Rev.* 829 (May, 1936).

recovery against the city, either on the contract or in quasi-contract. The rule in this latter regard differs in some respects from that applied to private corporations. "By the weight of authority the so-called estoppel which is applied by some courts where a private corporation has accepted performance of a contract and seeks to defend on the ground of *ultra vires*, is not applicable in the case of a public corporation."⁵⁸ The courts are in disagreement as to whether there can be a recovery in quasi-contract, where the contract is within the general powers of the city but there has been a failure to observe statutory requirements in its formation. The theory followed by some courts is that good public policy demands that there be no recovery where statutory specifications have not been followed. But there appears to be a definite trend toward the view that public policy requires the application of principles of quasi-contract and recovery on a *quantum meruit* basis where the contract was within the power of the city and the defect is one of procedure in its making. This would seem to be a desirable tendency because, as has been pointed out in an earlier chapter, municipal corporations are expanding their corporate or business activities and should be held to the same standards of liability as private corporations.

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⁵⁸ C. B. Elliott, *op. cit.*, chap. xix; E. McQuillin, *op. cit.*, vol. 3, chap. xxix, and vol. 6, sec. 2652.

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Mayor and Council Government: The Mayor

The opinion is often stated that men, rather than the form of government, are the important factors in securing efficient government, and that able men will secure good results, regardless of the form of government. Governments must be administered by men, and the personnel of public offices, both elective and appointive, is important. But while a skilled workman may secure fair results with poor tools, he needs the best of tools to secure the best results. However, it should also be pointed out that a poor workman cannot do good work even though he has the best of tools. As stated by the Waterbury, Connecticut, charter commission in its report of 1930: "At the worst, better results are to be expected with good tools than with poor ones, even in the hands of a poor workman, and much more so with a good workman. Similarly, better government is to be expected, whatever the human material available for managing it, if the form of government is such as to centralize responsibility and authority and to make evasion of responsibility difficult or impossible and such as to tend to eliminate ulterior considerations and motives from administration."¹

Regardless of the much-quoted statements by Pope, "For forms of government let fools contest; Whate'er is best administered is best," and by Edmund Burke that "the form of government reaches but a little way," the fact remains that the form of government is important not only in attracting the right type of men to office, as is shown by the council-manager plan, but in enabling them to carry on their work efficiently and economically once they have been

¹ *Report of the Waterbury, Connecticut, Charter Commission, 1930, p. 455.*

attracted to the municipal service. That the form of government is important in enabling competent servants to attain results is generally accepted by public administrators. The experience of many cities in attracting to, and selecting for public service, a better type of public servant as a result of a change in the form of government is sufficient evidence that the form of government is important. The claim that it is unimportant is usually advanced or resorted to only for the purpose of opposing and preventing a change in it—if the change will be detrimental to the personal interests of the individual or group relying on the doctrine. The strenuous opposition of bosses and machines to changes in the form of government which tend to simplify and concentrate power and responsibility bears evidence that this factor does count.² The general opposition of the bosses to the council-manager plan may be cited as an illustration.

It should be pointed out, however, that no form of city government will insure the efficient, economical, and honest administration of public affairs. "Municipal abuses," says McQuillin, "cannot be remedied alone by mere change in governmental organization. Even if it were possible to establish a perfect system of laws and ideal municipal organization we would greatly err if we should pin our faith to and stop at mere mechanism."³ The same view has been set forth by Dr. Barth as follows: "Mechanical reforms are valuable in that they simplify procedure and prevent smoke screens and make dishonesty more difficult. But they do not force better men into office nor cause better and wiser decisions. More than mechanical reform is essential. A change in the type of men who govern is prerequisite to better government. Wiser government does not flow automatically from tinkering with governmental mechanism."⁴ It is the belief in the soundness of these views that accounts for the extended attention given to the electorate and the electoral process in later chapters of this book.

² On the importance of the form of government, see W. B. Munro, *The Government of American Cities*, pp. 263-265; William Anderson, *American City Government*, pp. 310-311; E. McQuillin, *The Law of Municipal Corporations*, 2nd ed., vol. 1, sec. 348; Walter J. Millard, "Form Is Important," 17 *Pub. Management* 93 (Apr., 1935).

³ E. McQuillin, *op. cit.*, sec. 348.

⁴ H. A. Barth, "The Philadelphia City Council," 13 *Nat. Mun. Rev.* 294 (May, 1924).

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Three general types of city government have developed in this country—the mayor and council, the commission, and the council-manager. It should be noted, however, that there are many variations of these types. There is a weak mayor and a strong council type, and a strong mayor and a weak council type. There are also many variations in the commission and council-manager types.

The mayor and council form is the oldest and is still the predominant type of city government. There are over 16,000 incorporated cities and villages in this country; of these, approximately 400 are commission-governed and 700 have the council-manager plan, leaving the greater number under the mayor and council plan or some variation thereof, such as the president and board of trustees in villages. If we consider only the larger cities, the mayor and council plan still predominates, though to a much less striking degree. A recent study of the form of government in 2033 cities of over 5000 population revealed that 1266, or 62.3 per cent, were operating under the mayor and council plan; 325, or 16 per cent, were commission governed; 363, or 17.8 per cent, were using the council-manager plan; and 79, or 3.9 per cent, still retained some form of town meeting.⁵ If one were to venture a prediction as to the future, it would be that the number of cities using the council-manager form of government will continue to increase at the expense of both the commission and the mayor and council plans.

HISTORY OF THE MAYOR'S OFFICE

The mayor and council plan of government had its origin during the colonial period. The form of government in that period was similar to that in England. The mayor was in no case elected by popular vote; he was selected by the council in a few cases, but usually by the governor. His term of office was always one year, though reappointments were frequent.

The charters granted during the colonial period conferred few powers upon the mayor. He presided at council meetings but he had neither veto nor appointing power. Professor Fairlie has pointed out, however, that even during the colonial period the mayor was usually

⁵ *Municipal Year Book*, 1946, p. 42. The total number of cities having a population of 5000 or above in 1940 was 2042.

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a man with experience in municipal affairs and that he "became something more than a dignified figurehead, and was a real force in the municipal government."⁶

With the separation from Great Britain and the establishment of state governments, several changes were made in the system of municipal government. The reason for the state appointment of mayors no longer existed, now that an elective state executive had been substituted for the appointive colonial governor. New York transferred this power from the governor to the state executive council. Most states provided for the selection of the mayor by the city council.

From the Revolution to the present time there has been a steady increase in the powers of the mayor. The Philadelphia charter of 1796 provided that the select and common councils should in a joint meeting elect the mayor from the aldermen, who were appointed by the governor. Other charters of the period provided for the election of the mayor by the council, but in New York he continued to be appointed by state authority until 1821. In that year a constitutional amendment was adopted in that state providing that the mayor be selected by the common council. By 1821 the transition from the state-appointed mayors of the colonial period to locally chosen mayors had been completed.

The next step in the development of the office of mayor was election by popular vote. This came in the period following 1820. The charters of Boston and St. Louis, which were granted in 1822, and that of Detroit, in 1824, all provided for the popular election of the mayor. Baltimore followed in 1833, and New York in 1834. In 1826 the councils in Philadelphia were authorized to select the mayor from the freeholders, but not until 1839 were the voters given the power to elect him.

Popular election of the mayor did not lead to any immediate increase in his powers. This developed more slowly. A new charter adopted in New York City in 1830 gave him the veto power. Power to appoint committees of the council, over which he presided, proved to be an indirect means of exerting control. Administrative functions went from council committees to popularly elected officials—a result of the democratic wave of the Jacksonian era. This not proving to be

⁶ J. A. Fairlie, *Municipal Administration*, p. 74.

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satisfactory, provision was next made for the appointment of administrative officials by the mayor. This came in the period around 1850. At first this power was subject to confirmation by the council, but in the latter part of the century all checks on his appointing power were removed in some cities.

SELECTION AND REMOVAL OF THE MAYOR⁷

Certain legal qualifications for mayor are found in state laws or city charters. A minimum period of residence within the city is generally required; it varies from one to five years. The theory is that a person who has resided within the city for this minimum period will be more familiar with local conditions and consequently better qualified for the office. With an elective mayor it seems questionable whether it is necessary to require a minimum residence period by charter provision. One who has not resided in the community for a reasonable length of time would have little chance of being elected.

Citizenship is usually required for the mayor. This is generally secured by the requirement that he be a qualified voter of the state or city. This requirement establishes a minimum age qualification of twenty-one years; a few cities require an older age limit, usually twenty-five or thirty years. A few cities still require property-owning and taxpaying qualifications for the mayor. In evaluating such provisions, Russell M. Story said: "Failure to require property ownership and tax paying has not demonstrably lowered the character of those holding the municipal executive office in cities which do not require them. On the other hand these qualifications have not given evidence of their power to elevate the standards of the office in those cities which retain them."⁸

The legal qualifications for mayors as defined in city charters are less important than political qualifications. It is the extra-legal qualifications—the availability, the acceptability, and the known or potential strength with the electorate—that count. As will be pointed out in a later chapter, personality—the ability to appeal to the great mass of voters—is far more important in determining the type of

⁷ An excellent study of the mayor's office has been made by Russell M. Story, entitled *The American Municipal Executive*, published by the University of Illinois Studies in the Social Sciences, vol. 7, no. 3.

⁸ *Ibid.*, p. 41.

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person selected for mayor than any legal qualifications that can be written in a charter. It is these extra-legal or practical qualifications that are significant in determining the type of person elected to the office of mayor.

Popular election is the method used for the selection of mayors in most mayor and council-governed cities. In a small number of cities he is selected by the council. The procedure of nomination and election applicable to all city officers, including the mayor, will be discussed in later chapters. No unique features of mayoral election call for special consideration.

Although the merits of appointment as a method of selecting the administrative head of a city government will be discussed in a subsequent chapter on the council-manager plan, the weaknesses of popular election may be referred to at this time. Ability to gain voters in a mayoralty contest does not depend upon the ability of a candidate to administer public office. Rather is his success in an election too often dependent upon his political ability, which means the support of a political organization. And, unfortunately, political machines in cities have not always used the test of administrative ability in selecting their candidates for public office. Their test is, in too many cases, whether in using the powers of his office he will cooperate with the organization in his administration of public affairs. His continuance in office at the end of his term will depend more upon whether the organization has been satisfied with the way he has administered the affairs of his office, than upon the efficiency of his administration as viewed by the mass of unorganized and inarticulate citizens who profess to be interested in "good government." Obviously there are exceptions to these generalizations—La Guardia of New York and Hoan of Milwaukee may be cited as examples.

During the colonial period and immediately following our separation from England, the mayor's term of office was one year. There has been a gradual extension of this, until in many cities he now serves for a four-year period. Of the 13 cities having a population of 500,000 or over in 1940, all except one—Cleveland—now have a four-year term for their mayor. The percentage of smaller cities which elect their mayor for four years is lower; two years is still the usual term. It should be noted, however, that reelection is common

so that the actual term served is greater than that provided in the statutes. At least two states—Pennsylvania and Indiana—prohibit the reelection of the mayor for successive terms.⁹

In a democracy, provision is made for the removal of public officers whose services prove to be unsatisfactory. The recall as a method of removing public officers, including the mayor, will be discussed in a later chapter. Other methods which are provided in the various states for the removal of mayors involve action: (1) by the city council, (2) by the courts, and (3) by the governor of the state.

The power to remove the mayor has been generally held by the courts to be a common-law power of the city council. While this power is often given the council by specific provision in the statutes, the view usually taken is that in the absence of such statutory provision the council may remove, for cause, the corporate officers of the municipality.¹⁰ This power may, of course, be limited or modified by a statutory provision. Where the charter or statutes provide for the removal of the mayor by the council, the procedure varies. Although a simple majority is sufficient in some cases, a two-thirds or three-fourths vote is often required. Charges must usually be preferred and an opportunity be given for a public hearing.

Removal of the mayor by judicial process is also often provided. The court in which this power is vested varies in the different states. Likewise, there is variation in the grounds or reasons for which a mayor may be removed by the courts. In Illinois, if a mayor is guilty of a palpable omission of duty, or of oppression, malconduct, or misfeasance in the discharge of his duties, he is liable to indictment; and on conviction he is subject to a fine of not over \$1000 and to removal from office.¹¹ Under the Tennessee ouster law the courts removed the mayor of Nashville, and the mayor and one of the commissioners of Memphis in 1915.¹²

It was pointed out in the chapter on administrative control over local government that in a few states a mayor may be removed by

⁹ This same principle is found in the amendment to the federal Constitution proposed by Congress in 1947 limiting the President to two terms.

¹⁰ See *Commissioners v. Byars*, 167 Ky. 306, 180 S.W. 380 (1915), and the cases cited therein. Compare, however, *People v. Dreher*, 302 Ill. 50, 134 N.E. 22 (1922).

¹¹ *Ill. Rev. Stat.*, 1939, chap. xxiv, sec. 28.

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the governor. The charter of Greater New York gives the governor the power to remove the mayor and the borough presidents. Governor Hughes removed the presidents of the Boroughs of Manhattan and the Bronx, and Governor Dix removed the president of the Borough of Queens. Mayor Walker of New York City resigned from office in 1932 during a hearing before Governor Roosevelt on the question of his removal. Michigan, Ohio, and North Dakota also confer upon the governor the power to remove mayors. In the latter state the governor's action is subject to appeal to the courts. A very limited use of this power has been made by the governors of these states.¹³

The methods provided for filling vacancies in the office of mayor vary. It is usually provided that the vacancy shall be filled by special election unless the period remaining is short. Thus in Illinois, if the unexpired term is over one year, the vacancy is filled by election; if it is less than one year, the vacancy is filled by the council.¹⁴ In some states all vacancies, regardless of the unexpired term, are filled by the council. Where the mayor does not preside over the council, a separate officer being elected for that purpose, it is generally provided that the latter shall succeed the mayor in case of a vacancy. When Mayor Walker resigned in 1932, he was succeeded by Joseph McKee, president of the Board of Aldermen. Several other cities fill vacancies in the office of mayor in this manner. In some cases an officer other than a member of the council succeeds the mayor in case of a vacancy. In Indiana, for instance, the city comptroller succeeds.¹⁵

The salary of the mayor is sometimes fixed by charter or statutory provision. In other cases it is left to the council, but it is generally provided that it may not be changed during an incumbent's term of office. In view of the relatively short tenure and the campaign expenditures necessary to secure the position, the salaries paid mayors are comparatively small. The financial demands upon the mayor are such that in most cities the office cannot be looked upon as lucrative.¹⁶

¹³ See W. H. Edwards, "Governor Donahey and the Ohio Mayors," 13 *Nat. Mun. Rev.* 350 (June, 1924).

¹⁴ *Ill. Rev. Stat.*, 1939, chap. xxiv, sec. 16.

¹⁵ *Burns Annotated Indiana Statutes*, 1926, vol. 3, sec. 10, 276.

¹⁶ For the salaries paid mayors in cities over 10,000 population see the *Municipal Year Book*, 1940, p. 561.

POWERS OF THE MAYOR

General statements as to the powers of the mayor are dangerous because there are so many variations among cities that exceptions will be found to any generalization. While the variations are such that no exact scheme of classification can be made, in general they may be classified on the basis of the amount of power conferred upon the mayor. In some cities he has a dominant position; in others his powers are so limited that he is not in a true sense the directing head of the municipal government. On this basis, mayor and council cities may be classified as of the strong mayor or weak mayor type. New York and Detroit may be cited as illustrative of the strong mayor plan, and Atlanta and Providence of the weak mayor type.

As chief executive of the city, the mayor is the head of the administrative branch of the government. The most important of his administrative powers is that of appointing the heads of departments and the members of boards and commissions. Through his removal power he is able to exercise control over these officers and to secure cooperation among them. The extent of the mayor's appointing power varies, depending upon whether the city has the strong or the weak mayor type of government. In some cities council confirmation of the mayor's appointments is required. But in cities having the strong mayor plan, this is not necessary.¹⁷ Appointments made by the mayor of Boston must be approved by the Massachusetts State Civil Service Commission.

In the selection of department heads the mayor is subject not only to legal checks but also to practical limitations. Mayor Mitchel of New York City emphasized the pressure brought by the party organization to appoint "party men." "Centralization of responsibility" applies to the mayor as a party man as well as in his capacity of elected chief executive of the city. "Party considerations and pre-election promises determine many positions, and very greatly narrow

¹⁷ The following provision of the Denver charter is illustrative of charters under the strong mayor council plan of government: "The Mayor shall appoint the heads of all administrative departments, and shall appoint all commissions, boards and officers, under his control, and said appointees shall hold said appointments as long as their services are satisfactory to the Mayor."

the range of the executive's choice when he has come into power."¹⁸ It should also be pointed out that "it is by no means an easy thing to persuade the men who are best qualified by training to accept appointment under the city government."¹⁹

The number of independently elected officers, boards, and commissions is an important factor in the mayor's control over the administration. In a city where there are many independent boards and officers, the mayor finds his control over the administrative branch subject to serious limitations. Such a plan diffuses rather than centralizes responsibility. When the terms of all the members of boards and commissions appointed by the mayor do not expire at the same time but are overlapping, it means that the control of a newly elected mayor over the administration is limited. During the early period of his term a majority of the members of such boards and commissions will be not his own appointees, but holdovers from the preceding administration. Obviously, a mayor should not be held responsible for the acts of subordinates over whose selection he has had no control. Several cities now use the merit system for the selection of minor employees. This may also be looked upon as an indirect limitation upon the mayor's control over the administration.

Many variations are found in the removal power of the mayor. In some cities he is given absolute power to remove at will. This does not apply, of course, to employees holding positions under the merit system. New York City is an example of a city that vests complete power in the mayor to remove heads of departments. The more general practice is to limit this power to removal for cause only. In this case the mayor must file with the city council, the clerk, or other officer a statement of the reasons for removal. In some cases the incumbent is given the opportunity of filing a reply. The publicity involved in this procedure, it is hoped, will prevent arbitrary removals without cause. But in such cities the mayor's decision is final. In some cities the mayor may remove a department head only with the consent of the council. The tendency in recent charters is away from this limitation and toward giving the mayor absolute control. The new charter of Cleveland is illustrative of the broad

¹⁸ C. E. Merriam, *Chicago*, p. 258.

¹⁹ John Purroy Mitchel, "The Office of Mayor," 5 *Proceedings of Academy of Political Science* 479 (1915).

power of appointment and removal granted to mayors in strong mayor and council cities. It provides: "The mayor shall have power to appoint and remove directors of all departments, and officers and members of commissions not included within regular departments. Officers appointed by the mayor shall serve until removed by him or until their successors are appointed and have qualified." The generally accepted view is that complete freedom should be given the mayor in the appointment and removal of his subordinates.

It is questionable whether the confirming power of the council has resulted in any improvement in the type of personnel selected. In many cases it has been used by mayors to evade responsibility for their appointments, their excuse being that it was necessary to appoint someone suitable to the council. Referring to the power of the Chicago council to confirm the mayor's appointments, Professor Merriam has said: "At times this has been found a useful check, but on the whole it is a useless provision, for appointment becomes perfunctory and criticism of an appointment equivalent to a serious challenge to the administration when it might be intended only as a disavowal of responsibility."²⁰ Since public opinion generally holds the mayor, rather than the council, responsible for the appointments, he should be given full power. "The ability of the council to interfere, under a power to confirm or reject nominations, when some political favorite is to be served," says a former mayor of Baltimore, "is an injustice to the mayor charged with the duty of appointment, and often hinders the proper transaction of business; it places in office or retains in position a much lower order of talent than public opinion or the self-respect of the appointing officer would allow, were the power to appoint final and absolute."²¹

Centralization of authority and responsibility is essential to successful administration. If the mayor seeks the removal of a department head and the council refuses its consent, harmonious cooperation between the executive and the subordinate can hardly be expected afterward. This refusal of the council to agree to the removal will probably react on other employees and affect the morale of the whole service. It would be better to give complete

²⁰ C. E. Merriam, *op. cit.*, pp. 259-260.

²¹ Robert C. Davidson, "How to Improve Municipal Government," 153 *No. Am. Rev.* 585 (Nov. 1891).

power of removal to the mayor and then hold him responsible for its proper exercise. The theory is that by concentrating authority and power the mayor will be held responsible at the polls. It must be noted, however, that removal "at pleasure" opens the door to the spoils system and may be used by an unscrupulous mayor to pay political debts and to build up a political organization. Experience has demonstrated that the proper distribution of patronage and the building up of a powerful political organization will in many cases be more significant in determining the results at the polls than will an efficient and economical administration.

Another power given the mayor to enable him to control the administration is that of investigation. By statute and charter provision he is generally empowered to examine the records and books of administrative employees and the manner of conducting their work. The value of this method of control depends upon the initiative and aggressiveness of the mayor. Reports from department heads are also used by mayors to control the administration. In addition to the regular monthly or annual reports, mayors are often given power by charter provision to require reports from department heads at any time they see fit.

Conferences of department heads, or cabinet meetings, are also utilized by some mayors to control the administration. In some cities such meetings are held at regular periods, such as twice a week, weekly, or monthly; in others they are held on the call of the mayor.²²

In several cities the mayor is an *ex officio* member of many boards and commissions. By attending the meetings of such boards and commissions when time permits, he can exert an influence over their action. In most cases, however, he does not have time for this work and must content himself with supervisory and directory activities, rather than actually taking part in the administration as an *ex officio* member of boards and commissions.

The powers of the mayor have been greatly increased in the field of finance administration.²³ In many cities he has been made responsible for the preparation of the annual budget. The degree of coun-

²² J. O. Garber, "The Municipal Cabinet in the United States," 19 *Nat. Mun. Rev.* 168 (Mar., 1930).

²³ For further consideration of this question, see chap. xxviii.

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cil control over the budget prepared by the mayor varies. In some cities the council may make any changes it sees fit, increasing or reducing items by a simple majority vote. In other cities distinct limitations are placed upon the council in this respect; thus in Boston it may not increase any item in the budget submitted by the mayor but is limited to reducing or rejecting the proposals submitted. More often, the limitation on the council is the requirement of more than a simple majority to change items or the total of the mayor's estimate. In Denver this can be done only upon a vote of two-thirds of the members of the council.

In some cities, such as New York and St. Louis, the mayor is merely one of the members of a board which makes the budget. The finance committee of the council still prepares the budget in some cities. Even in such cities, however, as chief executive of the city and through his power to formulate and lead public opinion, the mayor is usually able to exert considerable control over the budget finally adopted. The item veto is generally given to him. This enables him to veto "riders" in appropriation ordinances, an evil which often assumes serious proportions.

It is the duty of the mayor as chief executive of the city to see that the law is enforced. This power is carried out through his control over the administration, especially the police department; but other employees, such as those in the health department, may also assist in law enforcement. The strict or lax enforcement of a particular law is usually the decision of the mayor. It is he who decides that the anti-noise or anti-smoke ordinance shall be more strictly enforced; that sentiment in the city is opposed to the state law prohibiting slot machines, pinball, and other games of chance and that the police shall "go easy" on its enforcement; and that prostitution can and should be stopped, and that the police shall be ordered to "drive prostitutes from the city." He has not only the duty but, in strong mayor cities at least, the power to see that the law is enforced.

There has been a steady and marked increase in the legislative powers of the mayor. Among these powers is that of calling special meetings of the council. This power is quite generally conferred upon the mayor; although some charters specify when such meetings may be called, this is usually left entirely to his discretion. When

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called in special session, the council is as a rule limited to the consideration of the questions specified in the mayor's call. Through the calling of special sessions a means is available by which the mayor may initiate legislation. Regular meetings of the council are held so frequently that this power to call special sessions is not often used. Messages to the council offer another means by which the mayor can influence municipal legislation. The following provision of the Los Angeles charter is illustrative of those generally found on this subject: "It shall be the duty of the mayor, annually, at the first meeting of the Council under this charter, and on the first meeting in January of each year thereafter, to communicate by message to the Council a general statement of the condition of the affairs of the corporation, and to recommend the adoption of such measures as he may deem expedient and proper; and to make such special communication to the Council from time to time as he shall deem expedient." Such messages are usually referred to a council committee and become the basis of council action. No adequate study of the influence of the mayor's messages upon municipal legislation has been made. A comparison of the recommendations made and the legislative results might throw some light on the question.

The mayor presides at meetings of the council, especially in the smaller cities. Although he presides in some large cities, such as Chicago, the tendency has been either to elect a separate officer for this purpose, as has been done in New York and St. Louis, or to authorize the council to select a presiding officer from its own members. Where the mayor presides, he is usually given the right to vote in case of a tie.

In some cities the mayor has the power to introduce measures in the council. Some charters specifically confer upon him—and in a few cases, the heads of departments—the power to sit in council meetings and take part in debate.²⁴ This offers an effective means of influencing legislation. The charter of Cleveland is illustrative of charters giving the mayor and department heads seats in the council. It provides:

The mayor and the directors of all departments established by the charter or that may hereafter be established by ordinance, shall be

²⁴ For the extent to which the mayor and department heads sit in council meetings in typical mayor and council cities, see J. O. Garber, *op. cit.*

entitled to seats in the council. Neither the mayor nor the director of any department shall have a vote in the council, but the mayor shall have the right to introduce ordinances and to take part in the discussion of all matters coming before the council; and the directors of all departments shall be entitled to take part in all discussions in the council relating to their respective departments. The council by ordinance or resolution may authorize other city officials to have seats in council.

Referring to the power given the mayor and department heads in Philadelphia to appear before the council or any of the committees to express their views, Dr. Barth has said: "This is not a dead letter. Bills are frequently drafted by a department head who later defends them on the floor of the council and before the committee which considers it. Even the mayor on important occasions addresses the council on matters which he deems essential to the success of his administration. This practice permits real leadership in legislation by those whose duty it is to enforce it."²⁵

The veto power is probably the most important of the mayor's legislative powers. Great variation is found in this power, ranging from the absolute veto, in which the action of the mayor is final, to the suspensive veto, which may be overridden by a simple majority vote of the council. The general rule today is to require a two-thirds or three-fourths vote of the council to override the mayor's veto. In New York City the mayor's veto power depends upon the subject matter of the ordinance. A two-thirds vote is sufficient to override his veto, except in the case of ordinances involving the expenditure of money or the creation of a debt, when a three-fourths vote is required, and of ordinances granting franchises, where his veto is final.

The influence of the mayor on municipal legislation is not determined entirely by charter provisions. As in the case of a governor or a President, much depends upon the personality, the drive, and the determination of the mayor. "Appeals to the people" are not limited to the Presidency. They have been made—and with success—by some of the more forceful of our mayors. The practice of some Presidents of withholding patronage until the legislation desired by them has been passed is not unique in American government. Resourceful and determined mayors have long used patronage—and

²⁵ H. A. Barth, *op. cit.*

the hope of patronage—to secure the enactment of ordinances they desired.

Harmonious cooperation from the council is an important factor to the mayor in carrying out his powers. It is as important as the legal powers conferred upon him by the charter. Where elections are conducted on a partisan basis, the mayor has more power when the legislative and executive branches of the government are of the same political complexion. In a city having non-partisan elections, a cooperative spirit between the mayor and the council does much to strengthen his position.

In the colonial period and just after our separation from England, the judicial powers of the mayor were of considerable importance. The mayor's court was given rather extensive criminal and civil jurisdiction. In a few cities mayors still possess some judicial power, the powers of justice of the peace being conferred upon them. The mayor's court is still in existence in some southern states.²⁶ "On the whole, however," says Story, "the position of the mayor as a judicial officer appears to be declining, owing largely, perhaps, to the development in the cities of other and better agencies for the administration of justice, and to the pressure of other matters upon the mayor's time and strength."²⁷

Closely related to judicial administration is the power of the mayor to remit fines and penalties and to release persons imprisoned for violation of municipal ordinances. This power still exists in many cities. In Illinois the mayor "may release any person imprisoned for violation of any city ordinance, and shall report such release, with the cause thereof, to the council at its first session thereafter." Generally, little use seems to have been made of this power in our cities, but in some cases it has been freely used—if not abused. Mayor Dahlman of Omaha issued 8000 pardons in eighteen years, an average of more than one a day.²⁸

In concluding this discussion of the powers of the mayor, it should be pointed out that, in addition to his strictly legal authority, he has some influence which goes with the office. Again, as was said

²⁶ For judicial powers of the mayor, see J. A. Fairlie, *Essays in Municipal Administration*, pp. 75-77; J. A. Fairlie, *Municipal Administration*, p. 421.

²⁷ R. M. Story, *op. cit.*, p. 107.

²⁸ John F. Showalter, "James C. Dahlman, Mayor of Omaha," 16 *Nat. Mun. Rev.* 111 (Feb., 1927).

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earlier in this chapter, the mayor is an influential politician, and this carries weight in having his policies carried out. The power of the office in a particular city may be said to depend upon the man who occupies the office of mayor. His personality, determination, and ability to dominate are important. The extra-legal powers of the mayor are often very important, especially in cities of the weak mayor type.²⁹

CONCLUSIONS

The increase in the powers of the mayor has unquestionably been of value in improving American city government.³⁰ The centralization of administrative control in the mayor's hands is to be commended.³¹ But since the office is elective, it is not always won by the man best qualified. As long as it is filled by popular election, extraneous factors having no relation to the candidate's ability to discharge the duties of the office honestly and efficiently may determine the outcome of an election. While the centralization of authority in the mayor makes better administration a possibility, it does not assure it. As will be pointed out in a succeeding chapter, herein lies the great merit of the council-manager plan of government. Although even this plan gives no assurance that a trained and able administrator will be selected to head the administrative branch of the city government, it is more probable under the appointive system. That this is true has been demonstrated in actual practice.

Too much weight should not be placed upon the mere concentration of power in a single man. Delos F. Wilcox pointed out that we must not fail to take into account the average character of the men likely to hold the office. "This is extremely important," he said, "for it is no more possible to get an adequate response from heaping responsibility upon an ignorant or weak man than it is to store a pail of water in a teaspoon. The responsibility will slop over if a man is

²⁹ On this point, see the study of Atlanta by Thomas H. Reed, 199 *Annals of the American Academy of Political and Social Science* 78 (Sept., 1938).

³⁰ For an excellent discussion of this question, see E. McQuillin, *op. cit.*, vol. 1, sec. 351.

³¹ For an opposite view, see D. B. Eaton, *The Government of Municipalities*, pp. 254 ff.; E. D. Durand, "Council Government versus Mayor Government," 15 *Pol. Sci. Quar.* 426, 675 (1900).

not big enough. It is a big mistake to think that there are plenty of men in any city who are capable of taking up the executive and administrative work of the city, and carrying it on successfully if only they are given full authority."³² That the strong mayor plan of government will not insure the honest and efficient administration of public affairs may be illustrated by the Tweed charter obtained from the legislature of New York. Almost unlimited power was placed in the hands of the mayor—a mayor who had been chosen for the office with the aid of Tweed. Despite this concentration of power—and, in theory, of responsibility—there ensued a period of extravagance, plunder, and corruption.

The strong mayor council plan of government is based on the principle that the concentration of power leads to a concentration of responsibility. But, as Dorman B. Eaton has stated, "holding him responsible is perhaps the most evasive, mischievous, and deceptive phrase in municipal literature."³³ As long as the chief executive is popularly elected, his major responsibility will be to "the party and its leaders by whom he was elected." All too frequently an official's record in office is of little importance in determining whether he shall be continued in office, for the outcome is in many cases the result of showmanship, ballyhoo, and other extraneous factors. As long as this is true, the concentration of responsibility is a rather valueless device. Unless there is an effective check on it, it is meaningless. Herein the council-manager plan has been found superior to the mayor and council form, the indirect method of holding the executive responsible through an elective council proving to be more effective.

The strong mayor plan has proved to be superior to the weak mayor plan in the formation of public opinion. Under the strong mayor plan the chief executive has shown a greater sense of responsibility for planning and formulating policies and securing public support for them. Herein the strong mayor and council plan has seemed to have an advantage over the council-manager plan, the absence of political leadership being a weakness of the latter. It is the administrative aspect of the modern city, however, which is of most importance, and in this respect the advantage lies with the manager plan.

³² Delos F. Wilcox, *The American City*, p. 276.

³³ D. B. Eaton, *op. cit.*, p. 256.

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Mayor and Council Government: The Council

As has been pointed out in the preceding chapter, there has been a steady and marked increase in the powers of the mayor, and a resulting decrease in the powers of the council. Both the legislative and the administrative powers of the council have decreased. The mayor's veto power and his power to appoint and remove administrative employees have encroached upon powers which formerly were vested in the council. The creation of boards and commissions which are independent of the council has also taken much power from the latter. The initiative and referendum may be looked upon as a limitation on the powers of the council. Despite this decrease in its powers, the council continues to occupy an important position in a city with the mayor and council form of government.

In the colonial period there was a single-chambered council composed of a mayor, a small number of aldermen, and a large number of councilmen. Following the Revolution, the bicameral city council appeared, Philadelphia adopting this plan in 1796 and Baltimore in 1797. The idea was unquestionably an adaptation to city government of the bicameral plan used in the national government. Pittsburgh (1816), Boston (1822), New York (1830), and St. Louis (1838) adopted the two-chambered city council system. By 1840 its use had become general in the larger cities.

Advocates of the bicameral system for city councils gave as its chief merit the insuring of adequate deliberation through delay. Hasty, secret, and ill-advised legislation could not be rushed through unobserved and unchallenged. Limitations on procedure in a single-chamber council, such as requiring three readings and that matters

lie over a given length of time before final passage, were held to be inadequate. "In a literal sense of the term this is delay," said the advocates of the two-house plan, "but they [measures] are taken up again by the same men, in the same frame of mind, guided by the same motives, convictions and interests; whereas, the delay of the double system entails more publicity, fresh thought and a new point of view."¹ This was the view taken by former Mayor Hart of Boston, who stated that a city council of two branches was "absolutely essential." He felt that the financial powers of the council, its control of the purse strings, was "so great that it should not be exercised by one body alone, nor until the matter is twice discussed in public by rival branches."²

In the latter part of the past century the use of the bicameral plan in cities began to be seriously questioned. Advocates of the single-chamber plan said that it would result in more efficient government by the elimination of conflict between the two houses. A single house, it was said, would tend to economy of administration. It was pointed out that the second house often increased but rarely diminished public expenditures. The one-house system was also advocated on the ground that it would help to define responsibility, "and the voters would be able to see without any chance of mistake just who is responsible for all legislation, where the blame rests when things go wrong, and thus make it possible to apply the remedy at the polls."³

The unicameral council is today generally accepted as superior to the bicameral plan in city government. Since the beginning of the present century, there has been a marked swing toward the unicameral council. In 1903 about one-third of all cities over 25,000 population had bicameral councils. The number of bicameral municipal legislative bodies has been reduced steadily since that time, there being only 17 cities with such councils in 1946.⁴ Among the latest cities to abandon the bicameral plan were Baltimore in 1923,

¹ J. A. Butler, "A Single or a Double Council," *Proc. Natl. Conf. for Good City Govt.*, 1896, p. 252.

² T. N. Hart, "How to Improve Municipal Government," 153 *North American Rev.* 580 (Nov., 1891).

³ S. B. Capen, "Shall We Have One or Two Legislative Chambers?" *Proc. Natl. Conf. for Good City Govt.*, 1896, p. 247.

⁴ *Municipal Year Book*, 1946, p. 44. Also see J. A. Fairlie, *Essays in Municipal Administration*, p. 126.

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Louisville in 1930, and Providence in 1940. New York City may still be considered to have a bicameral council. Though the Board of Estimate and Apportionment has many administrative powers, it also serves in some respects as the upper house of the city council.⁵ In addition to New York City, the chief survivors of the bicameral plan are Atlanta, Georgia (12 councilmen and six aldermen); Worcester, Massachusetts (30 councilmen and 10 aldermen); and Richmond, Virginia (20 councilmen and 12 aldermen).⁶

City councils have been reduced in size during the past twenty-five years. While this has been due in part to the abolition of the second chamber, there has also been a marked tendency toward reducing the unicameral house. Of the 24 largest cities in the United States, 18 are governed by a mayor and council. The size of the council in these cities is as follows: Chicago, 50; Cleveland, 33; St. Louis, 29; Milwaukee, 27; Minneapolis, 26; Boston, 22; Philadelphia, 22; New York City, variable but at present 23; Baltimore, 19; Buffalo and Los Angeles, 15; Louisville, 12; San Francisco, 11; Denver, Detroit, Pittsburgh, Indianapolis, and Seattle, 9. The size of the council in New York City is not fixed but depends upon the vote cast, there being one councilman for each 75,000 votes in an election.

The term for which members of the council are elected varies from one to six years. The one-year term which was the rule in the colonial period has practically disappeared. Of the 1115 cities over 5000 population which were operating under the mayor and council plan in 1940, 603 elected councilmen for two years; 428 for four years; 69 for three years; 10 for one year; four for six years; and one for five years.⁷

The question of the salary that should be paid to members of a city council is a difficult one.⁸ No man should be denied a seat because he cannot afford to make the financial sacrifice. All groups

⁵ On the Board of Estimate and Apportionment in New York City, see J. D. McGoldrick, "New York—The Eclipse of the Aldermen," 14 *Nat. Mun. Rev.* 360 (June, 1925); J. D. McGoldrick, "The Board of Estimate and Apportionment of New York City," 18 *ibid.* Supp. 125 (Feb., 1929), revised and reprinted, May, 1932.

⁶ See *Municipal Year Book*, 1946, p. 44, for a list of the 17 cities which still have bicameral councils.

⁷ *Ibid.*, 1940, p. 24.

⁸ See J. W. Pryor, "Should Municipal Legislators Receive a Salary?" *Proc. Natl. Conf. for Good City Govt.*, 1896, p. 252.

should be able to have a representative on the council, even though he cannot serve unless he receives compensation for the time spent. Furthermore, the city's business is of sufficient importance to warrant securing the best men available. But the difficult question is whether the payment of a salary aids in securing able men for the council. There are those who believe that the payment of a salary attracts men merely of mediocre ability—men who would not be interested in serving if they received no salary. A medium salary will be of no consequence in securing the services of men of the type desired. Service without any salary will be more attractive to men of this type than service with a small salary. Generally, a higher type of individual has been attracted to our school boards than to our city councils. Yet the salary for service on a school board is usually smaller than that paid members of a council. The nature of the work to be done and its prestige value are as important in attracting men to public service as the salary. Especially is this true of a position such as city councilman where full-time service is not required.

As the policy-determining body of the city, representation on the council should be available to all classes. If the abolition of salaries means that representatives of the laboring group or the poorer sections of the city cannot serve because of the time required, then salaries should be paid. A city council not only should attract the "ablest" or the "best," but should be representative of all classes and groups of people living in the city.

The highest salary paid to councilmen in a mayor and council city is \$8000 in Pittsburgh. New York City, Chicago, Philadelphia, and Detroit each pay \$5000. The salary is \$7200 in Los Angeles, \$3000 in Cleveland, \$2750 in Baltimore, \$2500 in Buffalo, \$2786 in Milwaukee, \$2400 in San Francisco, \$2000 in Boston, and \$1800 in St. Louis. In a city under 100,000 population the salary seldom exceeds \$1000 a year; often it is under \$500.⁹

METHODS OF ELECTING COUNCILMEN

The two methods most generally used for the selection of councilmen are election at large and election by wards. Detroit and Pittsburgh are the two largest cities which elect members of the city

⁹ *Municipal Year Book*, 1946, pp. 51 ff.

council at large. Los Angeles and Boston returned to election by wards in 1925, after giving election at large a trial. In 1931, Cleveland changed from a council of 25 members elected from four districts by a system of proportional representation, to a council of 33 members elected by wards.

Where elections are conducted on a partisan basis, election by wards often secures representation of a minority party when this would not be possible under election at large. Under election at large the complete slate of the majority party is usually elected. Where election is by wards, however, the minority will usually be strong in some wards and thus secure representation. This minority representation is of value in supplying criticism and thus tending to prevent abuse of power and the conduct of the government for partisan advantage.

Where elections are on a non-partisan basis, election by wards generally secures a better cross-section of the municipality. The poorer wards, the gold coast, the Negro section, the foreign-born section, and all the others have a better opportunity to secure representation in the council under the ward system than under election at large. Election by wards is also said to keep the council in closer touch with the people.

The chief weakness of the ward plan is that the members of the council work for the interests of their own ward rather than those of the city as a whole.¹⁰ It brings into the municipal field the "pork barrel" system of Congress. Trading between councilmen develops, each seeking to secure public improvements for his ward. He realizes that in the eyes of the voters this will be the standard by which his success as councilman will be measured. In discussing the Philadelphia council, Dr. Barth has said: "A councilman is expected to secure local improvements for his ward. One councilman who was defeated in the last election said he had secured eight million dollars' worth of improvements for his district and suggested that under the circumstances his defeat was undeserved."¹¹ There should be

¹⁰ E. McQuillin, *The Law of Municipal Corporations*, 2nd ed., sec. 598. Also see H. W. Williams, "The Reform of Our Municipal Councils," *Proc. Natl. Conf. for Good City Govt.*, 1896, p. 236; D. C. Sowers, "Denver—The Lengthened Shadow of the Mayor," 13 *Nat. Mun. Rev.* 550 (Oct., 1924).

¹¹ H. A. Barth, "The Philadelphia City Council," 13 *Nat. Mun. Rev.* 294 (May, 1924).

more incentive for a councilman to consider the welfare of the whole city. This can be secured by requiring him to answer to all the people of the city through election at large.

Election by wards also offers the opportunity for gerrymandering.¹² This device enables the party in control of the council to concentrate the opposition in a few districts by manipulating ward boundaries. The party by whom the gerrymandering is done may thus continue in control of the council, even though the opposition has a majority vote in the city as a whole. The party benefited by the gerrymandering carries over half the wards by a small majority, the opposition carrying the wards in which its strength has been concentrated by overwhelming majorities. Election at large removes this evil.

Some cities have combined election at large and by wards. In some cases, this has been done by electing part of the members by wards and the others at large. The charter of Buffalo provides for the election of nine councilmen by wards, and of five at large. This plan is also used in Hartford, Connecticut; Fort Wayne, Indiana; and several other cities. Another plan which seeks to secure the advantages of both election at large and by wards is that of electing the councilmen at large but providing that they must live in the wards they represent. In St. Louis, the 28 members of the council must reside in the ward they represent but they are elected at large. A similar plan is used in Atlanta, Georgia; Louisville, Kentucky; and a few other cities.

There were 1266 mayor and council cities of over 5000 population in 1940. In 1945, councilmen were elected at large in 37.3 per cent of these cities, by wards in 40.6 per cent, and by a combination of wards and at large in 22.1 per cent.¹³

PROPORTIONAL REPRESENTATION

Preferential voting as a method of electing city officials will be discussed in a later chapter.¹⁴ Another of the newer methods of

¹² For the attitude of the courts toward gerrymandering by a council, see 21 *Nat. Mun. Rev.* 389 (June, 1932).

¹³ *Municipal Year Book*, 1946, p. 46.

¹⁴ See chap. xix.

electing members of city councils is proportional representation.¹⁵ Although proportional representation is discussed in connection with the mayor and council plan of government, it should be noted that it can also be used in selecting the council in a council-manager city; in fact, it is in the latter cities that it has made the greatest progress. Proportional representation seeks to give to parties or groups of voters who have a common view on political questions, representation on the council in proportion to their voting strength. Under the ward system of electing one member of the council from each ward, if there are two parties, 51 per cent of the voters in one party may carry the ward and thus secure 100 per cent of the representation from that ward. By carrying each ward by a small vote they can secure control of the council; the minority has no representation. A few illustrations will show that this is more than a mere theoretical possibility, that it actually develops in practice. In the election of 1931 in New York City, the Democrats polled 851,216 votes and the Republicans 339,020. With 70 per cent of the vote cast, the Democrats elected 64 of the 65 aldermen, or 95 per cent. In 1921, Republican candidates for the council in Cincinnati received 68,000 votes, while the Democratic candidates received 61,000. With 53 per cent of the voters supporting them, the Republicans secured 31 of the 32 councilmen, or 96 per cent.¹⁶ A study in Baltimore in 1940 pointed out that 270,500 registered Democrats in that city were represented by 17 members in the city council, or one councilman for every 15,912 registered Democratic voters, whereas the 96,000

¹⁵ On proportional representation, see C. G. Hoag and G. H. Hallett, Jr., *Proportional Representation*; G. Horwill, *Proportional Representation; Its Dangers and Defects*; R. S. Moley, "Proportional Representation in Cleveland," 38 *Pol. Sci. Quar.* 652 (Dec., 1923); S. G. Lowrie, "Proportional Representation in Cincinnati," 20 *Am. Pol. Sci. Rev.* 367 (May, 1926); J. P. Harris, "The Practical Workings of Proportional Representation in the United States and Canada," 19 *Nat. Mun. Rev. Supp.* 337 (May, 1930); R. P. Goldman, "An Analysis of Cincinnati's P. R. Elections," 24 *Am. Pol. Sci. Rev.* 699 (Aug., 1930); H. L. McBain, "Proportional Representation in American Cities," 37 *Pol. Sci. Quar.* 281 (June, 1922); G. H. Hallett, Jr., *Proportional Representation, the Key to Democracy* (1940); F. A. Hermens, *Democracy and Proportional Representation* (1940); F. A. Hermens, *Democracy or Anarchy? A Study of Proportional Representation* (1941).

¹⁶ *A City Manager for Chicago*, published by the City Club of Chicago, 1935, pp. 19-20; Norman Thomas and Paul Blanshard, *What's the Matter With New York*, p. 310.

registered Republicans were represented by one council member.¹⁷ If there are more than two parties or candidates, a still smaller percentage of the total vote may secure 100 per cent of the representation. If election is at large, the same principle applies; the winning party secures representation out of proportion to its voting strength, and the minority party or parties secure no representation. In such cases the city council—the policy-determining body—is not an accurate cross-section of the city's population, and all shades of public opinion are not represented. Advocates of proportional representation believe that a council should be constituted so as to secure representation for these various groups or points of view.

If proportional representation is to be used, at least three members must be elected from each district in order to make representation of the minority possible. Then only the majority and one minority party can secure representation. To be most satisfactory and to make possible the representation of various groups or shades of opinion, five or more members should be elected from a district. In Cincinnati the nine members of the council are elected at large, and in Cleveland the 25 members of the council were elected from four districts. A unique plan is used in New York City, where each borough is allotted one member for every 75,000 valid votes cast for councilmen, with an additional councilman for a remainder of 50,000. The size of the council thus varies, depending upon the size of the vote cast. In the 1937 election, 26 councilmen were elected; and in the following elections the size of the council varied as follows: 1939 election, 21 members; 1941 election, 26 members; 1943 election, 17 members; and 1945 election, 23 members. Yonkers, New York, formerly used the fixed quota system, the quota being 10,000 votes, but this was abandoned in 1945 so the quota is now calculated from the vote cast, as in most other proportional representation cities.

The principle underlying proportional representation has been explained by Walter J. Millard of the Proportional Representation League, by the following simple, yet effective, illustration. Imagine, he says, 8000 people gathered in a park to elect seven candidates under the following rules:

¹⁷ *Baltimore Elections and Proportional Representation*, report by the Commission on Governmental Efficiency and Economy, 1940, p. 18.

"To vote, stand beside the candidate whom you wish to help."

"Change your vote as many times as you please until the polls close."

"When the polls close those seven candidates will be declared elected who are surrounded by the seven largest groups of voters."

He then goes on to describe the election.

The candidates would raise their banners and the voters group themselves about their favorites in person. Each voter goes first to the candidate he likes best.

Then someone discovers that 1001 votes are enough to insure election. However the voters may eventually arrange themselves, there is no way in which more than seven candidates can get as many as 1001 each out of a total of 8000. If 1100 have gathered about one candidate's banner, ninety-nine of them move on to help other favorites who are not yet sure of election.

When all of the voters have grouped themselves about the candidates who actually need their support, the smallest group would break up. Rather than waste their votes they would support others who have a chance of election. Then other groups break up for the same reason. Each group stays together so long as there is a possibility of gaining from smaller groups, but when it is the smallest group each member of it goes to help the candidate he likes best in the running who still needs more votes. This process of gradual elimination continues until there are only eight groups left, when the smallest of the eight concedes the election of the other seven.

In this way the greatest possible number of voters have a real share in the choice, and the representatives chosen are those whom the several different elements in the community really prefer.¹⁸

Two systems have been devised for applying this principle to the election by ballot of members of city councils. These are (1) the list system, which is the one most generally used in Europe, and (2) the Hare system which is the only one thus far adopted by any city in this country. Since it is the latter plan that has been generally advocated for use in our cities, the following discussion will be limited to that system.¹⁹

¹⁸ W. J. Millard, "The Proportional Representation System," *Proceedings of Eighteenth Annual Meeting of the Conference of Mayors and Other Municipal Officials of the State of N. Y.*, 1927, p. 129.

¹⁹ For an explanation and discussion of the list system of proportional representation, see C. G. Hoag and G. H. Hallett, Jr., *op. cit.*, chap. v.

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Under the Hare system, candidates for the council are nominated by petition, no primary being required. The number of signers of a petition required to nominate a candidate varies, the aim being to make it small enough to give reasonable freedom but large enough to discourage candidates who have no chance of election. The names of the candidates so nominated are listed on the ballot. Instead of placing a cross before the name of the candidate he prefers, the voter is told to place a figure 1 before his first choice, a 2 before his second choice, and so on, to as many choices as he desires to express. The following "Directions to Voters" explains the method of voting a proportional representation ballot:

Put the figure 1 in the square before the name of your first choice. Mark your second, third and other choices by putting the figure 2 in the square before the name of your second choice, the figure 3 in the square before the name of your third choice, and so on. You may in this way make as many choices as you please.

Your ballot will be counted for your first choice if it can be used to elect him. If it cannot help elect your first choice it will be given to the highest of your other choices whom it can help.

You cannot hurt any of those you prefer by marking lower choices for others. The more choices you make the surer you are to make your ballot count for one of them.

Do not put the same figure before more than one name.

If you spoil this ballot tear it across once, return it to the election officer in charge of the ballots and get another from him.²⁰

After the polls have been closed, the ballots are separated by election officers according to first choice. That is, all the ballots marked as first choice for candidate A are placed together, all those marked as first choice for candidate B are placed together, all of the ballots thus being arranged according to the first choices. They are then sent from the precinct to a central counting place for the city, or for the district if election is by districts. The total vote in the election having been determined, the next step is to determine the "quota," or the number of votes necessary to elect a candidate. This is secured by dividing the total number of votes cast by the number of places to be filled, plus one. The next highest whole number is the "quota." Thus in the above illustration of the crowd of 8000 in

²⁰ From the Hamilton, Ohio, charter.

the park with 7 to be elected, we add 7 plus 1 (add 1 to the number to be elected), making 8, and divide 8000 by this. The next highest number is 1001, which will be the "quota."

The object in determining the quota is to secure the lowest possible figure without making it possible to elect more persons than there are offices to be filled. Thus in the illustration above, if the quota had been 1000, it would have been possible for 8 to secure this number; but only 7 were to be elected. Since the quota might have been as high as 1142 and yet reached by 7 candidates, the question arises as to why it is put at 1001. The answer is that it is placed as low as possible in order to make representation available to as many people and to as small a group as possible. As has been pointed out earlier in this discussion, in New York City there is a fixed quota of 75,000. Thus the size of the council varies, depending upon the size of the vote cast.

When the quota is determined (in cities other than New York City), the next step is to proceed with the count. In the above illustration of the park crowd, it was suggested that when it was discovered that 99 more persons than were necessary for election were gathered around a candidate, they would move on to help other candidates not sure of election. If 1100 persons had voted for candidate A, only 1001 being required for election, 99 of his votes, or his surplus, would be transferred to their second choice as indicated on their ballots.

This is done for all the candidates having more than the quota, the surplus of only one candidate being transferred at a time, beginning with the highest, and new totals for all candidates being determined after each transfer. If at any time transferred votes bring the total of any candidate to the quota, no more votes are transferred to him, the vote being given to the voter's third choice, or the next choice indicated which has not been elected.

The question arises as to which of the 1100 ballots would be transferred. Obviously the result may vary, depending upon which of the ballots of an elected candidate are transferred and which are left to make his quota. The second and other choices of those who indicated their first choice for him may vary. There is thus an element of chance in the selection of the ballots to be transferred. Rules have been devised to make the transferred ballots a repre-

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sentative sample of the whole lot. This is secured in part by providing that an equal number of the elected candidate's ballots which are to be transferred must be taken from each voting precinct.

To use the illustration of the park crowd again, it was suggested that after the surplus voters had left the banners of the candidates with the greatest number of votes, the smallest groups would break up and support candidates who had a chance of election. Each group would probably stay together as long as there was a chance of gaining votes from smaller groups, not breaking up until it found itself the smallest group. This is the next step in counting the ballots in a proportional representation election. After transferring the surplus of all the candidates having more than the quota, the candidate with the smallest vote is eliminated and his ballots transferred according to the choice of the voters. This process continues, the lowest candidate being eliminated each time until the required number of candidates receive the quota, or until the number of candidates left equals the number of places to be filled.

By the voting of choices and the transfer of the ballots according to the choices indicated, the Hare system of proportional representation secures the election of candidates by, and representation for, groups according to voting strength. Under proportional representation the vote of each voter is made by such transfer to count for some candidate, but for only one. If it is not needed to elect his first choice, it is transferred to another of his choices; and if his first choice proves to have no chance of election, it is transferred to his second or other choices until it actually helps to elect a candidate.

Merits of and Objections to Proportional Representation

As has been pointed out above, the object of proportional representation is to secure representation for all groups and shades of opinion rather than for the majority only, as under the older systems of election. This is important in the election of the council, which is the policy-determining body for the city.

In the selection of a city council, there is the question not only of how to select a council which will be a cross-section of the city, but also of how to select one of integrity and ability. "The election of capable persons, outstanding citizens," says Joseph P. Harris, "is

of far more importance than the election of typical citizens." Measured by this standard, is proportional representation a desirable method of selecting members of a city council? There is no measuring stick to determine whether a councilman is a good one when qualifications and ability are considered. Persons will disagree on the question of whether a certain council is good. Generally, however, the view taken by most people who have studied the problem is that a higher type of councilman is selected under proportional representation. "Every large section or group of the population," says Professor Harris, "should have representatives of their choosing in the council, and the system of election should enable and encourage each group to elect its real leaders. The practical experience of P. R. shows that it does this more effectively than other methods of representation."²¹ *The New York Herald Tribune*, in commenting on the use of proportional representation in New York City, said: "It raised tremendously the character of representation in the Council, . . . and gave it a political division in reasonable accordance with the real sentiment of the city."²² Advocates of proportional representation contend that it not only results in the election of men of greater ability, but secures a more representative council. New York City furnishes an illustration. The last Board of Aldermen, prior to the adoption of proportional representation, was composed of 62 Democrats and three Republicans. At the first proportional representation election in 1937, the Democrats elected 13 of the 26 members of the council, the other 13 being elected by the Republicans (3), American Laborites (5), City Fusionists (3), and Insurgent Democrats (2). In 1939, the Democrats elected 14 of the 21 council members. At the 1941 election, the Democrats elected 17 of the 26 members, the other nine being made up of two Republicans, two American Labor party candidates, three City Fusionists, and one Communist. In 1943, the Democrats received 57 per cent of the final count votes and elected 59 per cent of the council. Similar results have been achieved in other cities; proportional representation offers an effective means of denying to a dominant political machine more representation in the council than its voting strength

²¹ J. P. Harris, *op. cit.*

²² Quoted in 28 *Nat. Mun. Rev.* 811 (Nov., 1939).

justifies. Under this system it secures the representation to which it is entitled, but no more.

Proportional representation makes the use of primary elections unnecessary. It determines not only party or group strength but also the strength of the individual candidates. There is no penalty for a party or group concentrating too many first-choice votes on a popular candidate. The second and other choices will probably be for other candidates of that party or group, and the party or group will by this leveling process secure the representation to which it is entitled. Likewise, there is no penalty for the party or group which divides its strength among many candidates, if the second and other choices of voters are for other of its candidates. By the elimination of candidates and the concentration of strength on those who are more popular, it will secure the representation to which the total vote entitles it. The elimination of the primary results in a saving both of money in the conduct of the election and of the voter's time.

Proportional representation makes ward or geographical representation possible but does not require it. A quota may be obtained for a candidate because he resides in a certain section of the city, thus securing the advantage of the ward system. Since it is necessary to have larger election areas unless councils are to become unreasonably large, the system is in effect a tendency away from ward elections.

Proportional representation has been objected to because of its complexity. It is impossible, it is said, for the average voter to understand it. "An actuary, mathematically skilled in the application of the doctrine of chances to financial and other affairs, might work with confidence upon the possibilities of this system," said the Supreme Court of Michigan, "but to the non-expert . . . it appears 'too intricate and tedious to be adopted for popular elections by the people.' To the average elector the destiny of his vote is a mystery, however easy it may be for him to follow instructions in marking his ballot."²³ In an editorial following the 1943 election, *The New York Times* said: "The complications alone of P. R. might seriously raise the question whether, even if it had the merits claimed for it, it would be quite worth while in the case of the Council."²⁴

²³ *Wattles v. Upjohn*, 211 Mich. 514, 179 N.W. 335 (1920).

²⁴ *The New York Times*, Nov. 18, 1943.

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The question arises as to whether it is necessary for the voter to understand the method of determining the quota and the result. The only disadvantage in his not doing so is that he will not have confidence in the system or the results.

An objection sometimes offered to proportional representation is that the system is so complex that the voter will be unable to mark the ballot. The instructions are so simple that it seems as if any qualified voter should be able to follow them. If a voter's literacy is not great enough to qualify him to vote a proportional representation ballot, it seems questionable whether his vote should count. In considering this objection, one writer has said: "The success of democracy depends on an intelligent electorate. We need have no fear if we disfranchise only those so ignorant that they cannot vote without birds."²⁵ The fact must be faced, however, that many invalid ballots are cast in proportional representation elections.²⁶ The highest number of invalid ballots seems to have been cast in the Boulder, Colorado, proportional representation election of 1919, when 275 out of 1165, or 23.6 per cent, were invalid. At the fourteenth proportional representation election in that city in 1945, 7 per cent of the ballots were invalid. The percentage of invalid ballots in Cleveland under proportional representation was 7.7 per cent in 1923; 7.9 per cent in 1925; 10.4 per cent in 1927; and 5.1 per cent in 1929. At the tenth proportional representation election in Cincinnati in 1943, 4.87 per cent of the ballots were invalid; and at the eleventh election in 1945, 4.45 per cent were invalid. Usually there will be a decrease in the number of invalid votes after the first election, as the voters

²⁵ R. P. Goldman, *op. cit.*

²⁶ On invalid ballots under proportional representation, see R. L. Mott, "Invalid Ballots Under the Hare System of Proportional Representation," 20 *Am. Pol. Sci. Rev.* 874 (Nov., 1926). The *National Municipal Review* carries a section on "Proportional Representation," edited by George H. Hallett, Jr. This gives data as to votes cast, number of invalid ballots, time needed to count the votes, and the results in proportional representation elections. The figures for the results in recent elections are based largely on that section. For elections in particular cities and a discussion of invalid ballots, see A. R. Hatton, "The Ashtabula Plan—The Latest Step in Municipal Organization," 5 *Nat. Mun. Rev.* 56 (Jan., 1916); R. C. Atkinson, "Ashtabula's Third 'P. R.' Election," 9 *ibid.* 9 (Jan., 1920); A. R. Hatton, "The Second Proportional Election in Kalamazoo," 9 *ibid.* 84 (Feb., 1920); A. R. Hatton, "Kalamazoo Tries Proportional Representation," 7 *ibid.* 339 (July, 1918); A. J. Lien, "Proportional Representation in Boulder, Colorado," 9 *ibid.* 408 (July, 1920).

become acquainted with the system. This has not been true, however, in all cases. In the first proportional representation election in New York City in 1937, 9.5 per cent of the ballots were invalid. At the 1941 election in that city, 12.6 per cent were invalidated; 12 per cent in 1943; and 11.3 per cent in 1945. In Toledo, the invalid ballots at the first election in 1935 were 3.78 per cent of the total vote, increasing to 5.91 per cent in 1937; and at the third election in 1939, 5.84 per cent were invalid. At the first election in Cambridge, Massachusetts, 1.6 per cent of the ballots were invalid, and at the second election in 1943, this increased to 4 per cent.

The time required to count the ballots is also said to be a weakness of proportional representation. Critics of the system point out that it took 12 days to count the ballots in the first Cincinnati election; and in the first proportional representation election in New York, the count in one borough was not completed until 28 days after the election. The added cost of conducting this election which could be attributed to proportional representation was \$700,000. In the 1939 election in New York City, the count was more efficient and expeditious, the count in Brooklyn, with the largest vote of any of the boroughs (600,000), being completed in nine days. The cost of proportional representation now dropped to \$260,000, as compared with \$700,000 in the first election. The count in 1941 was completed in seven days. In 1939, seven days were required to count the votes in the eighth biennial proportional representation election in Cincinnati, where the total vote was 146,364; six days were required in the same year to count 86,900 votes in the third proportional representation election in Toledo. In the same year, 15,989 votes were counted in Hamilton, Ohio, in 16 hours. In the 1945 election, 14,479 ballots were counted in Hamilton, Ohio, in 27 hours; and in Boulder, Colorado, 1812 ballots were counted in 3½ hours. In all cases the time required is greater than under a regular election system. Advocates of proportional representation say the better results in securing a higher type of council more than justify the delay. It is also said that it must not be forgotten that proportional representation eliminates the primary, and that the time required to determine the results of a proportional representation election is never so great as that between a primary and an election.

It is impracticable to use voting machines in voting for council-

men under the Hare system of proportional representation. This may be a consideration in its adoption where cities already have a large investment in voting machines. It should be pointed out that manufacturers are reported to be developing a machine for proportional representation voting.

An objection sometimes made to proportional representation is that it leads to party disintegration and destroys party responsibility. This is one of the grounds on which it has been attacked by F. A. Hermens, probably its leading critic in this country. Factions of parties will break away from the parent party and seek to elect their own representatives. The result will be that no party or group will have a clear majority in the council, with power to put through a constructive program.²⁷ An overrepresented majority party can, its critics believe, be held responsible more easily than a proportional representation plurality party. They prefer a plan under which blocs must make their agreements before the election, rather than one under which agreements are made in the council chamber after election.

It is also said that proportional representation accentuates racial and religious animosity. In an analysis of the first election in Cleveland, Raymond Moley stated that the results showed conclusively that race prevailed over party. He questioned whether groups elected on racial and religious bases had any more vital relationship to city government than the ward and party groups. "On the contrary," he said, "it is to be doubted whether groups of Poles as members of a nationality have any special claims to or interest in the affairs with which a city council deals. Nor has the W.C.T.U., except perhaps in certain kinds of law enforcement. Surely there cannot be Jewish and anti-Jewish ways of running a city." Unfortunately there have been too many cases in which it was apparent that voters did vote along racial and religious lines in proportional representation elections. There is evidence from other cities, however, that racial

²⁷ F. A. Hermens, *Democracy and Proportional Representation* (1940), *Democracy or Anarchy? A Study of Proportional Representation* (1941), and P. R., *Democracy and Good Government* (1943); W. E. Boynton, "Proportional Representation in Ashtabula," 6 *Nat. Mun. Rev.* 87 (Jan., 1917); E. W. Crecraft, "Ashtabula's Attack on P. R. and the City Manager," 9 *ibid.* 623 (Oct., 1920). But compare Murray Seasongood, *Local Government in the United States*, p. 110.

and religious groups do not have any greater effect in proportional representation elections than in ordinary plurality elections. The conclusion reached by Professor Harris in 1930, after a study of the workings of proportional representation, was that it "permits and perhaps facilitates voting along religious lines, but there is no proof that it has actually increased such voting."²⁸

The fact that proportional representation permits minorities to elect their candidates has resulted in Communists being elected to the New York City council. Commenting editorially on this fact following the 1943 election, *The New York Times* said:

In the recent Council election, in short, P. R. revealed what, apart from its complications, is fundamentally wrong with it. Its fundamental purpose is to do a doctrinaire mathematical justice to minorities. Its result in practice is to act as an instrument of disintegration, to emphasize areas of disagreement rather than agreement and to bring into office extremists who lack the spirit of compromise essential to the successful working of democracy. In Germany and Italy proportional representation was one of the main factors that permitted the growth of the Fascists and Nazis and other extremist parties and led to the breakdown of democracy through lack of any solid and stable majority with a consequent paralysis of action. In New York City virtually the sole value of P. R. has been in preventing a Tammany monopoly in the Council. But there are ways of preventing this result that have neither the complications nor the dangers of P. R.²⁹

A similar editorial attack was made following the 1945 election.³⁰ Another leading newspaper, *The New York Herald Tribune*, also considered this aspect of proportional representation and arrived at the conclusion that "the case for 'P. R.' as a piece of machinery which has actually worked, within its present setting, to improve materially our municipal government is a very strong one. The case against it, when not largely irrelevant, is so far unimpressive."³¹

On the basis of American experience, proportional representation offers the best method of selecting members of city councils. Its progress in this country, however, has been slow. Ashtabula, Ohio,

²⁸ J. P. Harris, *op. cit.*

²⁹ *The New York Times*, Nov. 18, 1943.

³⁰ *Ibid.*, Nov. 21, 1945.

³¹ *The New York Herald Tribune*, Dec. 10, 1945.

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in 1915 was the first city to adopt it; Boulder, Colorado, followed in 1917; Kalamazoo, Michigan, in 1918; Sacramento, California, in 1920; West Hartford, Connecticut, and Cleveland, Ohio, in 1921; Cincinnati and Hamilton, Ohio, in 1926; Toledo, Ohio, and Wheeling, West Virginia, in 1935; New York City in 1937; Yonkers, New York, in 1939; Cambridge, Massachusetts, in 1940; Lowell, Massachusetts, in 1941; Long Beach, New York, in 1943; and Coos Bays, Oregon, in 1945. Of these cities, Ashtabula, Cleveland, Kalamazoo, Sacramento, and West Hartford no longer use the system.

In some states proportional representation has been held to be unconstitutional, and it is probable that such decisions will be rendered in other states. Proportional representation was abandoned in Kalamazoo and Sacramento because of unfavorable court decisions. The decisions in Michigan and California were to the effect that proportional representation was an interference with or impairment of the voter's constitutional right to vote.³² This right was held to extend to all officers to be elected at an election—a right which in the view of these courts was denied by the Hare system of proportional representation. The voter was held to have only one vote, even though several councilmen were to be elected; and this was an interference with the express or implied constitutional right of the voter to vote for all the officers to be elected.

A different view of the constitutionality of proportional representation has been taken by the courts of Ohio and New York.³³ Since the New York constitution provides that all qualified electors "shall be entitled to vote for all officers that now are or hereafter may be elective by the people," the question was clearly presented as to whether a voter in a proportional representation election voted for *all officers* who were elected. The New York Court arrived at the conclusion that the voter was not denied his right to vote for *all officers*. "It is conceded by everybody," the court held, "that the borough could be divided into twelve districts, and one councilman

³² *Wattles v. Upjohn*, 211 Mich. 514, 179 N. W. 335 (1920); *People v. Elkus*, 59 Calif. App. 396, 211 Pac. 34 (1922); *Opinion to the Governor*, 6 Atl. (2d) 147 (1939); also see 28 *Nat. Mun. Rev.* 400 (May, 1939).

³³ For decisions in Ohio upholding proportional representation, see *Reutner v. Cleveland*, 107 Ohio St. 117, 141 N. E. 27 (1923); *Hile v. Cleveland*, 107 Ohio St. 144, 141 N. E. 35 (1923). For an excellent study of this question, see William Anderson, "The Constitutionality of Proportional Representation," 12 *Nat. Mun. Rev. Supp.* 745 (Dec., 1923).

elected from each district. This would give Brooklyn twelve representatives in the council, and yet the people of Brooklyn had only voted for one out of the twelve. Remove the artificial lines creating the districts, and give Brooklyn the same twelve men in the council, it is said to be illegal if the people can only vote for one of the twelve. What is the magic in these artificial lines that creates such a difference in result with little or no difference in principle?"⁸⁴ On the basis either of the result achieved or of judicial reasoning, the New York decision merits support. The fact that there is this constitutional problem should be kept in mind, however; constitutional amendments may be necessary in some states if proportional representation is to be used.

A "limited" vote system has been tried in a few cities to secure minority representation. Under this system the voter has fewer votes than there are members to be elected. Under the Boston plan of 1893, though 12 aldermen were to be elected, each voter was given but seven votes. The plan was also used in New York for a time for the election of aldermen.

ORGANIZATION OF THE COUNCIL

Although the organization, procedure, and powers of city councils are presented in the present chapter, which is devoted primarily to mayor and council government, it should be pointed out that most of the discussion will also apply to commission- and council-manager-governed cities. The differences in the organization, procedure, and powers of the legislative body under the three forms of government are not great, so a separate discussion of these questions for each form of government is unnecessary.

Some organization of the council is required for the carrying on of its work. First of all, a presiding officer is needed. The practice varies in the selection of this officer. The mayor may preside at council meetings, as in Chicago; a president of the council may be elected by the voters of the city, as in New York City and St. Louis; or the council may select the presiding officer from their own number, as is done in Philadelphia, Pittsburgh, and Denver.

A clerk is also needed by the council. The city clerk usually serves

⁸⁴ Johnson v. City of New York, 274 N. Y. 411, 9 N. E. (2d) 30 (1937).

in this capacity. Various methods—election, or appointment by the mayor, by the council, or by the mayor and council—are used for the selection of the city clerk. He attends the meetings of the council and keeps a record of the proceedings.

Committees play an important part in a city with mayor and council government. This is especially true of the larger cities. There are both special and standing committees, as in the state legislatures and in Congress. The number of standing committees varies, New York having 12; Chicago, 16; Philadelphia, 13; and Denver, 19. The method of selecting council committees also varies. In New York and Chicago a committee of the council selects the members of the committees, subject to council approval. In St. Louis and Denver, the presiding officer, who is popularly elected in the former and selected by the council in the latter, appoints the committees.

The work of committees is often more important than is generally appreciated. It is in the committees rather than on the floor of the council that important work is done. The amount of work is so great that councils have found it necessary to refer matters to committees. In discussing the procedure of the Chicago council, one writer has said: "Most of the work is done in committee. What has happened is that the council through the necessity of economy in effort, has divided into a number of small legislatures, which give the ordinances about the only consideration they receive."³⁵ A study of the Philadelphia council said that "most of the work is done in committee. After a bill has been agreed to in committee, it passes with little more than perfunctory discussion in the council."³⁶ Where committees need not report on ordinances referred to them, as in Philadelphia, "pickling," or killing in committee, is general.

There is disagreement as to the desirability of committees in city councils.³⁷ In commission-governed cities, since the commission

³⁵ Evelyn L. Barth, "Chicago's Time Consumed by Details," 14 *Nat. Mun. Rev.* 550 (Sept., 1925).

³⁶ H. A. Barth, *op. cit.* On the importance of committees in council procedure, see J. D. McGoldrick, "Our City Councils: New York," 14 *Nat. Mun. Rev.* 360 (June, 1925). On the position of the committee chairman, see L. E. Robinson, "The Committee Chairman in Municipal Administration," *Proc. of Third Annual Conv. of Ill. Mun. League*, 1916, p. 55.

³⁷ On the use of council committees, see E. A. Cottrell, "City Council Organization," 17 *Pub. Management* 95 (Apr., 1935); Philip Monahan, "Some

is small, and matters requiring study can be referred to the individual commissioners under whose department the subject falls, committees are generally felt to be neither necessary nor desirable. In council-manager cities, limited use of committees is desirable. Questions should be referred to the manager for study and report; he in turn will make use of the heads of departments in preparing the report. By attending council meetings the manager can furnish information and give advice which would otherwise be secured by committee hearings. A stronger case can be made for the use of committees in mayor and council cities, and especially is this true in the large councils where some method must be devised to expedite legislative business. In such cities, by using committees to give proposed ordinances preliminary consideration and to make recommendations to the whole council, time can be saved and the legislative process expedited.

POWERS OF THE COUNCIL

The powers of the city as a municipal corporation have been discussed in a preceding chapter. In the exercise of the powers granted to the city the council holds a key position. The courts have held that powers granted to a city and not conferred upon any particular officer belong to the council. While charters or statutes confer many, if not most, governmental powers upon definite departments, including the council, there are many powers which are not conferred upon any definite department, officer, or board, and these may be exercised only by the council.

The power of the council thus depends upon the powers which have been conferred upon other officers—the mayor, boards, and commissions—and the extent to which legislative powers have been reserved to the people through the use of the initiative and referendum. As has been pointed out before, by the increase of the specific powers granted to other officers, boards, and commissions, and by the increased use of direct legislation, the council in mayor and council cities has steadily decreased in power during the last century.

PROCEDURE OF CITY COUNCILS

Limitations upon the manner in which powers conferred upon the council are to be exercised are also found in city charters. A quorum is necessary before the council may transact business. This is the number of members of a city council, or other legislative body, which must be present for the transaction of business and the enactment of ordinances. In the absence of charter provision, a majority of the members constitutes a quorum. Where vacancies exist, the question has arisen as to whether a majority of the total membership or of the existing membership is required. The courts have held that a majority of the total number is necessary to transact business. Charters usually specify the number of members required for a quorum. Although the common-law rule of a majority is usually followed, some require the presence of a greater number, such as two-thirds or three-fourths.

Where a quorum is present, a majority vote of those present is sufficient for the enactment of an ordinance unless the charter requires a greater vote. If the charter requires a two-thirds or three-fourths vote of "the council," this is generally held to mean not two-thirds or three-fourths of the whole number composing the body but rather of those present, providing there is a quorum. In some cases, however, the charter specifically provides that a two-thirds or three-fourths vote of the whole membership of the council is necessary for certain kinds of action. Unless such a vote is received, the act is not a valid act of the municipality.

Charters often provide that on certain questions, such as the passage of ordinances and the letting of contracts, the yeas and nays shall be taken and recorded. The view generally taken by the courts is that such a provision is mandatory, but in some cases it has been held to be merely directory. Such a provision makes available a definite and accurate record of the council proceedings. It also impresses upon the council member a greater sense of responsibility when he knows that a permanent, written record of his vote will be made.³⁸ Charters often provide that ordinances must be read on a specified number of days—usually three—before they may be

³⁸ E. McQuillin, *op. cit.*, 2nd ed., vol. 2, secs. 622-624.

STEPS IN THE DISPOSITION OF USUAL ITEMS OF BUSINESS COMING BEFORE THE COUNCIL.³⁹

| Item | Source | Initial Action | Intermediate Action | | Final Action | | | |
|---|-------------------------|----------------|---------------------|------------------|--------------|-------------------|-----------------|--------------------------------|
| | | | Refer and Report | Committee Debate | Readings | Accept or Approve | File with Power | Adopt or Reject by Direct Vote |
| Unofficial communications | Any | Receive | X | X | X | X | X | X |
| | Officers and committees | Receive | X | X | X | X | X | X |
| Reports Motions, etc. Resolutions Ordinances | Members | Receive | X | X | X | | | X |
| | Members | Read | X | X | X | | | X |
| | Members | Read | X | X | X | | | X |

^a As by indefinite postponement, tabling, or other parliamentary expedient.

³⁹ E. L. Bennett, "Legislative Procedure of City Councils," 17 *Pub. Management* 199 (July, 1935).

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finally passed. Where this is merely a rule of the council, it may be suspended by a majority vote of the council. But where this is required by the charter, it must be followed. Charters sometimes provide, however, that this may be waived by a two-thirds or three-fourths vote of the members of the council.

Another procedural requirement which is often found in city charters is that ordinances shall relate to but one subject, and this shall be expressed in the title. The purpose of such a provision is to guard against fraud and surprise, and the passage of ordinances with "jokers" in them. The final procedural limitation on the council is that ordinances must be published before they can become effective.

While there is variation in different cities, the accompanying table prepared by Emmet L. Bennett shows the important steps which may be taken on the items of business coming before the council.

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Commission Government

The tidal wave which struck Galveston, Texas, on September 8, 1900, leading to a loss of over 6000 lives and enormous destruction of property—both public and private—is usually said to account for the origin and spread of the commission form of city government. This statement is true to the extent that it was Galveston which popularized the new form of government. It should be pointed out, however, that the commission plan had been used before in other cities and that the charters of these cities were secured and studied by Galveston in formulating its new charter. It seems worth while to call attention to these instances in which the commission plan was used before its adoption in Galveston.

A charter was granted to the city of Sacramento in 1863 which conformed very closely to the later commission plan. A board of trustees, composed of three members elected at large for a two-year term, constituted the legislative body. These three trustees, known as the first, second, and third trustee, respectively, were each placed in charge of a department. The first trustee, who was president of the board, was given general supervision over all subordinate officers of the city, and he had special charge of the police department. The second trustee was made commissioner of streets; and the third, superintendent of waterworks. Gradually new officers, boards, or commissions were created until finally the board of trustees became a purely legislative body. In 1893 the plan was abandoned for the mayor and council system of government.¹

Another case of the early use of the commission plan of govern-

¹ F. H. MacGregor, *City Government by Commission*, University Extension Series No. 423, Univ. of Wisconsin, 1911. For the plan, see *Session Laws of California*, 1863, p. 415.

ment was in New Orleans in 1870.² The charter granted the city in that year provided for a board of administrators, composed of a mayor and seven administrators elected at large. Collectively the board constituted the city council, determining policies and appointing and removing subordinate officers. Each administrator became the head of a department, the seven departments being finance, commerce, improvements, assessments, police, public accounts, and waterworks and public buildings. The salary of the mayor was \$7500, and that of each administrator, \$6000. The plan was abandoned in 1882.

The Sacramento and New Orleans charters referred to above are the earliest cases of the use of the commission plan in American cities.³ Professor MacGregor, in his study of commission government, stated that the plan worked "very well" in Sacramento and "fairly well" in New Orleans.⁴ Its abandonment in both cities seems to have resulted from pressure brought by politicians.

It remained for Galveston to popularize the commission form of city government. A desperate situation faced the government of that city following the tidal wave of 1900. Public property—schoolhouses, fire stations, the light and water plants, the streets—was destroyed or badly damaged. The destruction of private property was such that the ability of the people to pay taxes was diminished. Many who owned no property and had no special attachment left the city. City scrip sold at fifty cents on the dollar. City bonds on which the city defaulted in interest payments fell to sixty. The old government—a mayor and 12 aldermen, all elected at large—failed in the crisis.

² *Session Laws of Louisiana*, 1870, p. 30; F. H. MacGregor, *op. cit.*, p. 22.

³ Other cities in which the form of government resembled in some respects the commission plan were Washington, D. C. (1874), Memphis (1879), and Mobile (1879). None of these, however, furnishes such striking precedent for the commission plan as do Sacramento and New Orleans. For the Washington, Memphis, and Mobile plans, see T. H. Reed, *Municipal Government in the United States*, pp. 185-188; T. S. Chang, *History and Analysis of the Commission and City Manager Plans of Municipal Government in the United States*, chap. iii. For a description of the present government of Washington, D. C., see L. F. Schmeckebier, *The District of Columbia, Its Government and Administration*; W. F. Dodd, *The Government of the District of Columbia*; F. Telford, "Unhappy Revelation in District of Columbia's Government," 15 *Nat. Mun. Rev.* 579 (Oct., 1926); F. A. Fenning, "Federal Management of the Federal City," 20 *ibid.* 16 (Jan., 1931).

⁴ F. H. MacGregor, *op. cit.*, pp. 21-22.

They debated, discussed, and passed resolutions but did nothing of a constructive nature to meet the situation.

In desperation the people turned to the Deepwater Committee, an organization of business men which had been formed earlier to secure the improvement of the harbor. After studying the charters of other cities, including some of the commission plans discussed above, this Committee framed a new charter and presented it to the state legislature for adoption. In submitting the plan, the Committee said: "It is hoped that the central idea of this new charter—that of a commission—embodies the practical solution of that hitherto unsolved problem: how to govern, cheaply and well, a municipal corporation. We are asking for a charter, placing the entire control of the local government in the hands of five commissioners, designed to benefit the people rather than to provide sinecures for politicians."⁵

The legislature granted the charter on April 19, 1901, and it went into operation September 18, 1901, a year after the destruction of the city. As passed by the legislature, two of the commissioners were elective and three were appointed by the governor of the state. This provision of the charter was held unconstitutional by the Court of Criminal Appeals in 1903. A drayman who was fined for violation of a sanitary ordinance attacked the validity of the ordinance on the ground that it deprived citizens of the right of suffrage guaranteed by the constitution of Texas, since a majority of the commissioners were appointed rather than elected. The court held the charter unconstitutional on the ground that citizens were deprived of a voice in the selection of persons who were to govern them.⁶

The Supreme Court of the state, which has final jurisdiction in civil matters, upheld the constitutionality of the appointive provision.⁷ In civil affairs the acts of the commission were constitutional and would be sustained. But in criminal matters, which included the enforcement of police regulations, the acts of the commission, according to the Court of Criminal Appeals, were void. To meet this situa-

⁵ E. S. Bradford, *Commission Government in American Cities*, p. 5.

⁶ *Ex parte Lewis*, 45 Tex. Crim. Rep. 1, 73 S.W. 811 (1903).

⁷ *Brown v. City of Galveston*, 97 Tex. Rep. 1, 75 S.W. 488 (1903).

tion, the legislature in March, 1903, amended the charter, making all the commissioners elective.

Commission government in Galveston proved successful. The city was rebuilt, its grade raised and the Sea Wall constructed, pavements and sewers were replaced, and the waterworks and light plant, the city hall and fire engine houses were repaired. Interest payments on city bonds were resumed, and the city was placed on its feet again. The success of commission government in Galveston received nation-wide publicity.⁸

Houston adopted the commission plan in 1905 with some significant modifications. There was a small commission of five members elected at large, but the mayor was given the veto power, and the power to appoint all heads of departments, subject to confirmation by the four aldermen. The mayor was thus made the responsible head of the city government. As contrasted with the Galveston charter,⁹ the Houston charter provided that the commissioners must devote their entire time to the duties of their office.¹⁰ The commissioners were to be the actual superintendents in charge of their departments and not merely the directors or supervisors of the departments.

It remained for Des Moines, Iowa, to popularize and publicize commission government. In 1905, an attorney of that city, James G. Berryhill, while on a business trip to Galveston, made a study of the operation of commission government. He returned with a favorable report, and a movement was started to secure the passage by the Iowa legislature of a bill permitting the use of the commission plan by the cities in that state. The bill failed of passage at the 1905-1906 session, but was again presented and became a law in March, 1907. The initiative, referendum, and recall, and non-partisan ballot for primaries and elections were added. These latter

⁸ See E. R. Cheesborough, "Galveston's Commission Plan of City Government," 38 *Annals of the American Academy of Political and Social Science* 891 (Nov., 1911); G. K. Turner, "Galveston: A Business Corporation," 27 *McClure's Magazine* 610 (Oct., 1906).

⁹ The Galveston charter fixed the mayor's salary at \$2000 and that of the other commissioners at \$1200. The mayor was required to devote six hours a day to city work, but there was no such provision in the case of the other commissioners.

¹⁰ In Houston the salary of the mayor was fixed at \$4000, and that of the commissioners at \$2400.

features are generally accepted today as essential features of commission government, which is frequently referred to as the "Des Moines Plan."¹¹

USE OF COMMISSION GOVERNMENT

The addition of the initiative, referendum, and recall to the commission plan accounts in part for its spread to other cities. Where before there had been fear of so much concentration of power in a small commission, it was now felt that adequate safeguards against arbitrary action were provided. Des Moines had found a means by which the commission could be held responsible for the exercise of its power. The result was the rapid spread of commission government until about 1917 when the peak was reached, with 500 commission-governed cities. The number of such cities has steadily decreased since that date, there being only 325 cities of over 5000 population using this plan in 1946. The new adoptions of the commission plan are now almost negligible; the number of abandonments in any year exceeds the adoptions. Most of the losses in commission-governed cities have been to the council-manager plan; but a few, such as Buffalo, have gone back to the mayor and council plan. Among the larger cities which are still operating under commission government are Newark and Jersey City, New Orleans, Portland (Oregon), St. Paul, Omaha, Birmingham, Memphis, San Antonio, and Des Moines.

The limited use of the commission plan becomes more striking when we consider that its adoption is now possible in 37 states. Professor Benson in a survey made in 1938 found that municipalities in 20 states could adopt the commission form under statutory provisions; in seven states it could be done under home-rule grants of power; and in 10 states it could be done under both.¹² In most of the other states, cities might secure the use of the commission plan under special charters. While under the statutes of 15 states any city may adopt the commission plan, in most states its use is restricted to cities having a certain population. In these states the

¹¹ See E. S. Bradford, *op. cit.*, chap. iii, for the fight for commission government in Iowa.

¹² George C. S. Benson, "Classes and Forms of Government," *Municipal Year Book*, 1938, p. 171.

minimum population is generally 1000 and the maximum varies from 50,000 to 200,000.

HOW COMMISSION GOVERNMENT WORKS

The commission plan of city government concentrates both power and responsibility in a small commission which takes the place of the mayor and council. The number of commissioners elected varies from three to nine, five being the usual number. Their term of office varies from two to six years. Both complete and partial renewal of commissions are used. Some cities elect all the members at the same time for a two- or four-year period. In others, as in North Dakota, one commissioner is elected each year for a five-year period. The argument for partial renewal is that it will give the council a continuity of personnel and policy. The election of fewer officials at one time will also lead to greater concentration of attention on them by the electorate.

The members of the commission in all cities operating under this plan in 1946 were elected at large.¹³ In 76 per cent of these cities, the commissioners were elected on a non-partisan ballot. Forty-four per cent of the mayor and council cities used the non-partisan ballot, and 83.5 per cent of the council-manager cities used this method of election.

Collectively the commissioners constitute the city council; individually they are heads of departments or divisions of the city government. Thus in a commission-governed city the commissioners serve in a dual capacity: collectively they are the city's legislative body for the determination of policies, and individually they serve as administrative heads of city departments. The names of the departments and the scope of work of each vary. The following departments are often found: public affairs, accounts and finance, public safety, streets and public improvements, and parks and public property. The mayor is usually commissioner of public affairs.

Charters vary as to the time commissioners are required to devote to city affairs. Some specifically require them to devote their full time to their official duties. The law is sometimes silent on the

¹³ *Municipal Year Book*, 1946, p. 46.

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subject. In others the time required is stated in such general terms—"ample time," "as much time as necessary," or such time as "may be necessary for the full and complete discharge of said office"—as to be of no value. Where commissioners must devote their full time to their official duties, it probably means that many men will be unwilling to accept the position in view of the insecurity of tenure and the small salary. If they are required to devote only part of their time and can continue their private work, they may be willing to stand for election to the commission.

Although the salaries paid the commissioners in commission-governed cities are larger than those paid councilmen in mayor and council cities, they are generally considered inadequate in view of the fact that serving on the commission is often a full-time position. The salaries in the ten largest commission-governed cities in 1946 are given in the accompanying table. The average salary

| <i>City</i> | <i>Population (1940 Census)</i> | <i>Salary of Commissioners</i> | <i>Salary of Mayor</i> |
|--------------------|-------------------------------------|------------------------------------|----------------------------|
| New Orleans, La. | 494,537 | \$6000 | \$10,000 |
| Newark, N. J. | 429,760 | 7500 | 8,250 |
| Portland, Ore. | 305,394 | 5000 | 6,000 |
| Jersey City, N. J. | 301,173 | 7500 | 8,000 |
| Memphis, Tenn. | 292,942 | 5000 | 10,000 |
| St. Paul, Minn. | 287,736 | 4500 | 5,000 |
| Birmingham, Ala. | 267,583 | 7000 | 8,000 |
| San Antonio, Texas | 253,854 | 6000 | 8,000 |
| Omaha, Neb. | 223,844 | 4500 | 5,000 |
| Des Moines, Ia. | 159,819 | 4200 | 5,000 |

paid commissioners in cities having a population of 50,000 to 100,000 is about \$3500, the mayor's salary generally running from \$500 to \$1000 more. In cities with a population of 30,000 to 50,000, the average salary paid commissioners is about \$2500, with the mayor receiving about \$500 more.

Various plans are used to assign commissioners to the department they are to head. The general practice is for the commission to assign its members to the various departments. In some cities, however, the voters elect commissioners to specific departments; and in others, as in Portland and St. Paul, assignments to departments

are made by the mayor. Although as a general rule the commission rather than the electorate is better able to determine which department an elected commissioner is best qualified to fill, cases have arisen where a man was well qualified for a position and the people expected he would be appointed to it by the commission, but instead he was selected for another. The fact that one of the commissioners who is strong politically wants the department of finance is often a more important factor in making department assignments than the special qualifications of another commissioner for the place.¹⁴ Because of this situation, there has been a tendency to elect commissioners for a definite position rather than to the commission generally, as was the practice in the early years of the movement.

The mayor is usually elected to a specified position—generally the commissioner of public affairs. Some charters provide, however, that the candidate receiving the highest vote shall become mayor. In other cities the commissioners select one of their members to preside at meetings of the commission, he being designated mayor. The mayor does not occupy an important position in a commission-governed city. He has no veto power, and usually his appointing power is no greater than that of the other members of the commission. As titular head of the city government he is usually more influential than the other members of the commission. But his legislative and administrative powers are shared with the other members. His position is less powerful than that of the mayor in a mayor and council city. As has been pointed out above, the salary of the mayor in a commission-governed city is usually slightly higher than that paid other members of the commission.

In commission-governed cities the appointment of subordinate officers and employees is usually placed in the commission. Some cities, however, provide for appointment by the mayor, subject to confirmation by the other members of the commission. In some cities the commissioner nominates the subordinates in his department, with the power of selection in the commission. In the making

¹⁴ See The Referee, "Concerning Commission Government in Des Moines," 10 *Nat. Mun. Rev.* 372 (July, 1921). For arguments in favor of election to a specific department, see L. T. Johnson, "Commission Government for Cities: Election to Specific Office versus Election at Random," 2 *ibid.* 661 (Oct., 1913).

of appointments in commission-governed cities there is often trading among the commissioners. One commissioner is permitted to appoint his subordinates in return for his approval of the appointees of the other commissioners. While the charter may say that appointment is by the commission, in actual practice it is usually done by the commissioner under whom the employee will work. This may be where the appointing power should be lodged. The defect lies in placing the official responsibility on the commission and in practice having the power in the hands of the individual commissioners.

This tendency of commissions to defer to the recommendations of the individual commissioner whose department the question concerns is very general. The result is five mayors or, as someone has suggested, five czars. The existence of this practice in Portland has been described as follows:

Experience shows there is a certain reticence on the part of the commissioners in disapproving the recommendations made by each other. Each one is jealous of the right to conduct his own department. If approval is not given to his recommendations, it is only human nature if a tinge of vindictiveness may spice his action when an opportunity presents itself. This sort of thing has been done, but it does not happen very often. It is recognized that the commissioner in charge has usually given more study to a subject pertaining to his own department, and naturally he has much pride in the effectiveness of his recommendations. When a commissioner is puzzled over just what to do, or prefers to "pass the buck," he refers the problem to the council as a whole without recommendation.¹⁵

In discussing the abandonment of commission government in Lynn, Massachusetts, one writer has said:

Had there been a spirit of unity in the governing board there would have been no disposition by the electorate to have changed. In Lynn each commissioner was elected as a specific department head, and the legislative feature was entirely forgotten. As a result, no matter how one of the commissioners conducted his department the rest dared not risk criticizing, for fear their own toes might be trodden on. The consequence was we had five little mayors; . . . If citizens felt aggrieved at some

¹⁵ J. J. Sayer, "Portland—The Commission Plan," 13 *Nat. Mun. Rev.* 502 (Sept. 1924)

action, or lack of action, by one of the commissioners and took complaint to the others they were informed that the matter was outside their jurisdiction—that they could not interfere with another commissioner's department.¹⁶

CONSTITUTIONALITY OF COMMISSION GOVERNMENT

Commission government was early attacked in the courts on the ground that it was contrary to the provision of the federal Constitution guaranteeing to every state a republican form of government. The Supreme Court of Iowa, in upholding the constitutionality of commission government, held that the "provision of the Constitution of the United States, invoked in this case, is a guarantee by the federal government to the state; and it does not apply to a city. Cities are unknown to the national Constitution. They are organized under the state constitution and state laws." The court went on to say, "The new plan provides for a government by representatives chosen by the people, and is clearly republican in form; but even though it were not, it would not be affected by the provisions of the Constitution of the United States here invoked, for the reason that municipal corporations are mere creatures of the legislature and subject to its control."¹⁷

MERITS AND WEAKNESSES OF COMMISSION GOVERNMENT

The greatest merit of commission government lies in its centralization of power and responsibility. The centralization of power in a small board "permits the transaction of the city's business with the same promptness and efficiency with which the affairs of a private corporation are managed." It was suggested by advocates of the plan that this feature would be especially valuable in granting franchises and other public privileges. "The citizen of the commission city," it is said, "knows who is responsible for impure water, the unclean streets, or the negligent police force, and may direct his criticism against the delinquent officer." The consciousness of

¹⁶ "The Abandonment of Commission Government in Lynn, Massachusetts," *7 Nat. Mun. Rev.* 93 (Jan., 1918).

¹⁷ *Eckerson v. City of Des Moines*, 137 Ia. 452, 115 N.W. 177 (1908).

this responsibility on the part of the commissioners will lead them to be more responsive to public opinion, more considerate of the public interest, and less inclined to negligence in the duties of their office.¹⁸

By the centralization of power and responsibility an effort is made to avoid the opportunities for buck-passing and the shifting of responsibility which exist under mayor and council government. It is an effort to apply Mark Twain's advice to put all your eggs in one basket and *watch that basket*. In discussing commission government, E. S. Bradford says: "In place of the old theory of city government, 'Distribute authority among many, so that no one shall have power to do much harm,' has been substituted the principle, 'Place the management of the city's business in the hands of a few, and watch those few.'"¹⁹

The centralization of power under commission government generally leads to more promptness of action than under the mayor and council plan. The citizen can go to the commissioner at the head of the appropriate department when he has a complaint to make, and he will secure prompt action. He knows who is responsible, and he knows that the same commissioner has power to remedy the situation. "If the system does not guarantee efficient administration," says Ford H. MacGregor, "it at least promises to disclose where the blame for inefficiency should be made to fall."²⁰

Opponents of the commission plan point to the indifference of the electorate and say that the centralization of power may lead to more serious consequences, especially greater corruption, than under the mayor and council plan with its divided power and checks and balances. Admitting that there is the possibility of centralized responsibility, critics of commission government question whether it will function with an indifferent electorate. Concentration of responsibility under the commission plan must be supported by an intelligent public opinion, by a continuous public scrutiny which the commission must respect, if not fear.²¹ As will be pointed out in a later chapter, it is often questionable whether such an enlightened, informed, and intelligent public opinion exists.

¹⁸ C. R. Woodruff (ed.), *City Government by Commission*, pp. 78-79, 308.

¹⁹ E. S. Bradford, *op. cit.*, p. 8.

²⁰ F. H. MacGregor, *op. cit.*, p. 105.

²¹ C. R. Woodruff (ed.), *op. cit.*, p. 79.

In too many cases the public opinion which does exist is that formed by the activities and agitation of an interested minority group.

Advocates of the commission plan state that it will bring into the field of government the principle employed by private business, where "the stockholders elect a board of directors, which, under the charter, exercise all the power needed to run the business successfully."²² Its critics say that this concentration of power is too great, with all the executive and legislative power being fused in the hands of a small board, and the principle of separation of powers being completely abandoned.²³ "It creates a bunch of five, who initiate everything, carry through everything, and then certify everything. They make your laws, if you are going to have municipal laws, they make up your budget, they assess your taxes, they spend your money, they conduct your public works—then they certify themselves. They would be a true oligarchy, an elected oligarchy."²⁴ The answer to this objection is that public opinion and the use of the initiative, referendum, and recall offer sufficient check upon the commission.

In a commission-governed city, the same body votes the taxes and spends the money. The commissioners as a group pass upon their own requests for money for their departments, which they in their individual capacity as department heads will spend. Critics of commission government maintain that the principle of separation of powers as applied to the appropriating and spending of money still has merit.

Centralization of power and responsibility is not sufficient to insure good city government. "Good government," says Clinton Rogers Woodruff, "depends primarily upon men. Good laws may help. Good men are essential." What type of man is selected under the commission plan? Have they been of a higher type than that selected under the mayor and council plan? Where full time is re-

²² E. S. Bradford, *op. cit.*, p. 8; Charles W. Eliot, "City Government by Fewer Men," 14 *World's Work* 9419 (Oct., 1907).

²³ W. G. Cooper, "Objections to Commission Government," 38 *Annals of the American Academy of Political and Social Science* 183 (Nov., 1911); D. F. Carpenter, "Some Defects of Commission Government," 38 *ibid.* 192; C. O. Holly, "Defects and Limitations of the Commission Plan," 38 *ibid.* 201.

²⁴ C. R. Woodruff (ed.), *op. cit.*, chap. viii.

quired of commissioners, the salary offered has not been sufficient in most cases to attract the type of individual desired. Henry Bruère, in his study of commission government, came to the conclusion that the plan has not produced a new type of officeholder to the extent expected. "The men who are now governing commission cities are not, for the most part, a new type of public official freshly drawn from private business, or the professions. Most of them are experienced officeholders."²⁵ This is a fair appraisal of the situation.

A serious and valid criticism of commission government is that it is an unsatisfactory method of securing experts to head departments. The election of commissioners who become heads of departments in a city will not secure experts to head the departments of finance, streets, parks, public property, or whatever the designation may be in the particular charter. The method of selection—popular election—and the consequent insecurity of tenure are not designed to select qualified administrators. In pointing out the need of long familiarity with, and training in, such lines, or of technical knowledge and special skill to head administrative departments of our cities, one critic of the commission plan has said: "Universal experience shows that we cannot get such servants by resort to the polls, with the frightful hair-pulling and dirt throwing of city campaigns."²⁶ Commission government is based upon the fallacious idea that any man can do anything.

As has been pointed out earlier in the chapter, the duties of the commissioners in Galveston were of a supervisory nature; permanent administrators did the work. With the increase in pay and the requirement that they devote full time to the duties of their office—a requirement originating in Houston and followed in other cities—commissioners became administrators. Says A. Lawrence Lowell:

Now election by popular vote is a very poor way of selecting expert administrators, because however good judges the people at large may be of a man's general intellectual and moral capacity, they have neither the means nor the leisure for the careful scrutiny needed to estimate his

²⁵ Henry Bruère, *The New City Government*, p. 88.

²⁶ F. I. Herriot, *Defects of Commission Plan*, quoted in F. H. MacGregor, *op. cit.*, p. 125.

professional qualifications. An appointing body, if it does its duty, examines more evidence and considers more candidates before making a selection than the public can possibly do, and the best experts are highly unlikely to be willing to undertake a campaign to obtain the place. Moreover, if expert administrators could be chosen in this way, they could not be permanent, for that is in its nature inconsistent with representing a fluctuating public opinion as expressed in recurrent elections.²⁷

The result in many cities has been the election of the "hail-fellow-well-met" type. One writer, in discussing the personnel of the Portland council, has said: "No one of these men has had previous experience or technical training such as would give him special fitness as a city executive in charge of operations of the type and magnitude of many city problems."²⁸

The election of commissioners who become heads of departments often results in the election of men who obviously have no qualifications to head the administrative departments of which they have charge. Henry Bruère pointed out that when he made his study of commission government in Topeka, the commissioner of water was a barber by trade, the commissioner of streets was a house mover, and the commissioner of public buildings, parks, and health described himself as a cub reporter.²⁹ Many cases of this nature arise in commission-governed cities.

While commission government is said to concentrate authority and fix responsibility, it does not go far enough. Although there is concentration in a small board, it is also true that there is division of executive authority and responsibility among the five men. What is needed is the centralization of administrative authority in one man. This we do not have in commission government, for, as has been pointed out before, the mayor is only the titular head of the city government.

The absence of a single responsible head has proved to be a serious weakness of commission government. Friction has developed among the commissioners, or between them and the mayor.

²⁷ A. L. Lowell, *op. cit.*, p. 287. Although the argument here was directed to the election of commissioners to specific departments, it is also applicable to the election of commissioners who become heads of any department.

²⁸ J. J. Sayer, *op. cit.* Also see C. M. Fassett, "The Weakness of Commission Government," 9 *Nat. Mun. Rev.* 642 (Oct., 1920).

²⁹ Henry Bruère, *op. cit.*, p. 92.

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The failure of cooperation on their part as heads of departments has often worked to the detriment of the city. With a single directing head, as in the strong mayor and council or council-manager plans, an obstinate or recalcitrant department head who refuses to cooperate can be removed. Under the commission plan, however, the mayor has no power to remedy such a situation.

This failure to cooperate on the part of commissioners when acting as department heads may be illustrated by the experiences of Nashville and St. Paul. In referring to the experience of St. Paul, one writer has said: "After six years of commission government St. Paul, the capital city of Minnesota, is somewhat disillusioned. The complaint against commission government is the familiar one of lack of coordination of activities. In the opinion of many, this has resulted in duplication of effort and rivalry between department heads, with consequent increased cost of administration."³⁰ Another writer, in discussing Nashville's experience with commission government, stated that there was

marked competition among the various commissioners to build up their own departments at the expense of the others, and for a group to turn against one or two of the five and attempt politically to ruin their opponents by refusing to vote necessary funds to a designated department. . . . Either through mismanagement or an improper distribution of funds certain departments spent, before the year was out, all of the money allotted to them at the time the annual budget was adopted; and the other commissioners have refused to vote additional sums to carry on these departments in a satisfactory manner. The whole city is thus forced to suffer because of a lack of foresight and efficient planning on the part of one commissioner or because of a political quarrel in which few people outside of special partisans are concerned.³¹

Newark, New Jersey, offers another illustration of this weakness of the commission plan. A survey of the operation of commission government there reported that the habit of the commission "of readily acceding to the views and adopting the proposals advanced

³⁰ T. L. Hinckley, "Commission Government Losing Ground in St. Paul," 10 *Nat. Mun. Rev.* 70 (Feb., 1921).

³¹ I. R. Hudson, "Nashville Plays Politics," 10 *Nat. Mun. Rev.* 452 (Sept., 1921). Also see J. Q. De Raay, "The Middleboro Revolution," 11 *ibid.* 63 (Mar., 1922).

by individual commissioners on matters originating within their departments but affecting city-wide policy as well as departmental administration, prevents unified planning and coordination of city functions." According to this evaluation of the commission plan in Newark, "Its component parts seldom synchronize. Its five wheels are all steering wheels, each trying to guide the governmental machine in a different direction."³²

The election of commissioners at large rather than by wards has been advanced as a merit of the commission plan, in that it makes the governing body representative of the entire city. Although a desirable feature of this form, it can be secured under other plans. It is an advantage not inherent in or limited to the commission plan. The percentage of commission-governed cities selecting commissioners on a non-partisan basis is greater than in mayor and council cities but less than in those operating under the council-manager plan. Advocates of commission government can claim no monopoly on the election at large and non-partisan ballot plans for selecting members of the council or commission.

Critics of the plan say that the commission is too small for purposes of policy determination or legislation. Especially in a large city, they say, a small commission cannot represent all groups and shades of opinion. They contend that it provides a council which is too large for executive and administrative purposes and too small for legislative or policy-determining purposes.³³ Of these objections, the former has more validity. It is on the administrative side that commission government is weak; and it is the administrative side of city government that is the most important. It is in this respect that the council-manager plan is a great improvement over both the mayor and council and the commission forms of city government. This newest form of city government will be discussed in the following chapter.

³² H. G. Fishack, "Commission Government Has not Redeemed Newark," 199 *Annals of the American Academy of Political and Social Science* 71 (Sept., 1938).

³³ C. R. Woodruff (ed.), *op. cit.*, p. 148.

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The Council-Manager Plan

As has been pointed out in the preceding chapter, two of the chief defects of the commission form of city government are: (1) the diffusion of responsibility among several persons, or the absence of a single head, and (2) the placing of amateurs in charge of administrative work, or the absence of a permanent professional administrative force. The commission form of government proved weak insofar as the commissioners served as heads of departments. It was contrary to the principle, "For administration, appoint." The weak mayor, or the absence of a single authority in the field of administration, also proved to be a defect. The newest form of city government, the council-manager plan, is in a sense an outgrowth of commission government, being an attempt to remedy these defects.

Analogies were drawn from other fields in formulating the council-manager plan.¹ It was pointed out that in a business corporation the stockholders choose a board of directors, which in turn selects the president or manager. The company executive selects most or all of his operating staff, being responsible to the directors merely for getting results. This argument was presented by a Dallas, Texas, newspaper in advocating the adoption of the manager plan, as follows: "Why not run Dallas itself on business schedule by business methods under businessmen? . . . The city manager plan is after all only a business management plan. . . . The city manager is the executive of a corporation under a board of directors. Dallas is the corporation. It is as simple as that."²

¹ Cf. 19 *Nat. Mun. Rev.* 529 (Aug., 1930).

² Editorial in the *Dallas News*, quoted in Harold A. Stone, Don K. Price, and Kathryn H. Stone, *City Manager Government in the United States* (1940), p. 27.

In our city schools we elect a board of education, which in turn selects a superintendent of schools, the basis of selection being his ability to perform the duties of the office. In determining whether he has the necessary ability, previous training and experience are the most important factors. After he has been selected, the superintendent is given practically complete determination of the personnel of his force. A similar principle is applied in the state university. The voters elect the board of trustees, which then selects the president. When he has been selected, he is given practically complete control over the personnel on the staff. This same organization is usually found in churches, lodges, and fraternal organizations. The rank and file select a board of directors, and probably some other officers; but whenever technical or expert ability is needed, appointment is left to the board of directors. Once selected, this expert or person with special training and ability is given rather extensive power and freedom of action in carrying out the work for which he was selected.

Managing a city is a position which has come to require special and technical qualifications. With the increase in functions, the development of new and varied services, the increase in the number of employees, and the expenditure of large sums of money, the older governmental organizations—the mayor and council plan and the commission form—have become inadequate. To meet this need, the experience of other fields, especially business and education, was drawn upon, and the council-manager plan was devised. The principle is so logical that it is difficult to understand why the plan was not used earlier in our cities.

HISTORY OF THE COUNCIL-MANAGER PLAN

The manager plan had its origin in Staunton, Virginia.³ The chairman of the committee on streets seems to have originated the idea while observing the administrative efforts of the railroad for which he worked, as contrasted with the methods used by the city. The chairmen of committees acted as heads of departments in

³ It is worth noting that earlier writers advocated an appointive executive, based upon the German plan of an appointive burgomaster. See A. R. Conkling, *City Government in the United States*, p. 35; R. T. Ely, *The Coming City*, p. 39.

Staunton. In July, 1906, the committee on streets was authorized to investigate the advisability of employing a competent and practical city engineer to take charge of certain street improvements, and "to perform other duties devolving upon the superintendent of streets, as well as such other duties as might be assigned to him by the council." In August, 1906, the committee reported, advocating the council-manager plan.

The arguments used in this report differ little from those advanced today in favor of the manager plan. The committee stated:

Regarding Staunton simply as a business corporation to the extent that it is engaged in selling water to its citizens, in protecting them from fire in return for the protection paid for by them in the shape of water taxes; in lighting its streets and in furnishing police protection (this last covering not only the actual services of the police force, but cleaning, repairing and keeping in order its streets); and in giving streets to its citizens, it is evident that the same principles should be applied as would be applied in the case of any ordinary business concern. It would be absurd to expect the office force of such a business concern to see to the active operations of the company; a manager would be employed who would have all these matters in charge, and the business could not be economically administered in any other way. At the same time, such a manager should not be hampered in any way by instructions from the office force, and would report directly to the directors or owners of the concern.

Therefore your Committees recommend that all administrative work of the city be placed in the hands of some competent salaried official to be employed by the city, who shall undertake the management of streets, water, fire department and electric lights, in so far as the work of these different departments requires the active management of some responsible head, and in so far as this work heretofore has been done under the supervision of the various committees. The duties of such an employee would be to carry out all work which the Council or its committees direct to be done in the way of laying and repairing water mains, making new streets and repairing the old, seeing to the sweeping of the streets and the collection of garbage, and the proper maintenance of the Fire Department. In short, such an employee would have the duties generally imposed upon the general manager of a business corporation, and in him would combine the duties in other cities imposed upon heads of departments. He would be manager or superintendent of the city's work.

The report recommended that the committee on ordinances be instructed to prepare and present to the council an ordinance

creating the office of Municipal Director. The committee report, despite strenuous opposition, was adopted. It was not until January, 1908, however, that the ordinance proposed in the report was adopted. Staunton thus became the first council-manager city in the United States. Charles E. Ashburner, division engineer of the Chesapeake and Ohio Railway Company, was selected for the position at a salary of \$2500 per year.⁴

Little publicity was given to the use of the manager plan in Staunton. It remained for Lockport, New York, to give widespread publicity to, and in a sense to popularize, the council-manager idea. In the fall of 1910, the Board of Trade of that city was considering the adoption of the commission form of government which at that time was spreading rapidly. Richard S. Childs of New York City, then secretary of the National Short Ballot Organization and later president of the National Municipal League, suggested to the Lockport Board of Trade the possibility of improving on the commission plan by incorporating with it the city-manager idea. An effort was made to secure legislative approval of a bill which would have enabled the city to use the manager plan. Though unsuccessful in securing this approval, the movement is worthy of notice because of the widespread publicity given to the city-manager idea.⁵

The honor of being the first city in the United States to adopt by charter amendment the small council and appointive manager idea goes to Sumter, South Carolina. Though necessitating a constitutional amendment and legislative enactment, the movement was successfully promoted; and in 1912 Sumter became the first full-fledged council-manager city in the country.

It remained, however, for Dayton, Ohio, to establish firmly the council-manager idea. The Dayton Bureau of Municipal Research referred to the government of the city as "government by deficit." In six years the deficit amounted to \$360,000. In the ten-year period 1903-13, the debt increased from \$26.37 per capita to \$46.13,

⁴ James R. Haworth, "How the City Manager Idea Got Its Start in America," 39 *Am. City* 111 (Sept., 1928). Also see L. D. White, *The City Manager*, chap. vi; S. P. Silling, "How the City Manager Plan Originated in Staunton," 11 *Pub. Management* 204 (Mar., 1929).

⁵ R. S. Childs, "The Lockport Proposal," 4 *Am. City* 285 (June, 1911); 39 *Am. City* 19 (Sept., 1928).

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or 76 per cent. In 1913, 47 per cent of the total income was spent in the liquidation of maturing bonds and interest. Bonds were being issued for expenditures which represented current expenses and not permanent improvements.⁶ It was this situation which led the Chamber of Commerce of Dayton in the fall of 1912 to begin agitation to secure a new city charter under the newly adopted home-rule amendment to the state constitution. A committee of five, under the chairmanship of John H. Patterson of the National Cash Register Company, was appointed by the Chamber of Commerce. The committee reported in favor of the council-manager plan. A committee of 100 was then set up, including persons not associated with the Chamber of Commerce, to secure a new charter. After several meetings, this committee agreed to support candidates for a charter commission who were pledged to the city-manager plan of government. In March, 1913, two months before the election of members of the charter commission in May, the Dayton flood occurred. The flood accentuated an already apparent need, for the old government broke down under this crucial test. Governor Cox declared martial law in the city and named Mr. Patterson as colonel in charge of citizen relief work. In May, fifteen persons pledged to the manager plan were elected to the charter commission. The charter was completed on June 23, 1913, five weeks after the members had been elected. It was approved by the voters on August 12, 1913, by vote of two to one, and became effective on January 1, 1914. The council first offered the managership to General Goethals at a proposed salary of \$25,000 a year. When he declined, the position was offered to Henry M. Waite, city engineer of Cincinnati, at a salary of \$12,500.⁷

The steps in the adoption of the council-manager plan in Dayton have been given in some detail since, in a sense, this marks the real beginning of the council-manager movement in the United States. The charter was well drafted, the five members selected for the first council were all sympathetic to the manager plan, and the selection of the first manager proved to be fortunate. As compared with the unsatisfactory record in previous years, the council-manager plan gave an excellent demonstration of efficient admini-

⁶ See H. A. Toulmin, *The City Manager*, p. 11.

⁷ For an account of the origin of the manager plan in Dayton, see C. E. Richter, *City Manager in Dayton*, chap. i.

stration of public affairs. The new plan of government had been tried in a larger city and found equal to the task. Other cities which had doubted the practicability of the plan were now ready to follow Dayton's lead. Since that time there has been a steady increase in the number of cities operating under the council-manager plan.

By 1920 this plan was in effect in 157 cities; by 1930, in 385; and by 1940 there were 525 council-manager cities in the United States. As of January 1, 1947, the plan had been adopted by 679 cities and nine counties in the United States and by 40 places outside the United States. The cities ranged in size from Bendix, New Jersey, with a population of 40, to Cincinnati with a population of 455,610.⁸ Seventy-six cities adopted the council-manager plan in 1946, the greatest number of adoptions thus far in any one year.

One out of every five cities of over 10,000 population in the United States were operating under council-manager government in 1946; the ratio for cities of over 100,000 was 23.9 per cent. The plan's greatest appeal has been to cities in the 50,000 to 100,000 population group, 29.2 per cent of these cities having adopted it. Twenty-four per cent of the cities in the 25,000 to 50,000 population group, and 19.9 per cent of those in the 10,000 to 25,000 classification were using it.⁹

Forty-two states, either by constitutional home-rule provisions or by general statute, now authorize cities to adopt the manager plan. In some of these states, however, where use of the plan has been authorized by statute, it is limited to cities in certain population groups. In some of the other states, a city may be authorized to use this plan by special act. Extensive use has been made of this method of adopting council-manager government in Delaware, Florida, and Georgia. Council-manager cities are found in 42 states, but extensive use of the plan is confined to a few of them. The states having the greatest number of council-manager cities on January 1, 1947, were Maine, 79; Michigan, 62; Texas, 57; Virginia, 48; Florida, 46; California, 42; and Pennsylvania, 36. At that time, five states had only one council-manager city each.

⁸ Statistical data in this chapter have been taken from *Municipal Year Book; Public Management; Recent Council-Manager Developments and Directory of Council-Manager Cities* (April, 1946). Developments during the year 1946 have been supplied by the International City Managers' Association, 1313 East 60th Street, Chicago.

⁹ *Municipal Year Book*, 1946, p. 42.

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Only 29 cities adopting the council-manager plan during the past quarter-century have abandoned it by a vote of the people.¹⁰ Among the larger cities which have abandoned it after a trial are Cleveland and Akron in Ohio; Trenton, New Jersey; Fall River, Massachusetts; Tampa, Florida; and Binghamton, New York. In his analysis of the 25 cases of abandonment of the manager plan up to 1940, Arthur W. Bromage gave the following as the chief reasons: (1) defectively drawn charters; (2) voters during periods of economic depression showing their resentment against taxes by changing the form of government; and (3) strong organization and effective work by political interests to overthrow the plan while citizen groups relaxed and did not make sufficient efforts to get out supporters of it. Departures from the accepted organization of the plan, such as making the manager both political and administrative head of the city, have resulted in some abandonments. In some cases the organization has been sound but the personnel has in practice violated the fundamental principles of the plan. The manager may leave the field of administration and invade the field of policy, or the council may interfere in administrative appointments. On the basis of the number of cities which have adopted the plan the number of abandonments is not large. And a study of the reasons for abandonment reveals no fundamental defects in the plan itself. They do reveal, as Professor Bromage has stated, that "the plan, in itself no open sesame to good government, depends like any sound structural principle upon judicious adaptation and execution, as well as on firm citizen support." That it has had this in most cases is shown by the small number of abandonments.

WORKING OF COUNCIL-MANAGER GOVERNMENT

(a) *The Council*

The council-manager plan provides for an elective council, which in turn appoints the manager. Councils in manager cities

¹⁰ Arthur W. Bromage, *Manager Plan Abandonments* (1940); *Municipal Year Book*, 1942, p. 344. Also see articles by Professor Bromage in 19 *Nat. Mun. Rev.* 599, 761 (Sept., Nov., 1930); 25 *ibid.* 85 (Feb., 1936); Mayo Fesler, "Why Cleveland Abandoned the Council-Manager Plan," 13 *Pub. Management* 399 (Dec., 1931).

are generally smaller than those where the mayor and council plan is used. A few cities have increased the size of their council with the adoption of the manager plan, but the number of cities that have decreased its size is much greater. Most of those that have increased its size were operating under the commission plan. In addition to appointing and removing the manager, the council is the policy-determining agency of the city. It is the council that passes ordinances, votes appropriations, and determines whether bonds shall be issued. After the policies have been determined by the council, they are carried into execution by the manager. The duties of the council are legislative; those of the manager are administrative.

The success of council-manager government depends in large part upon the type of person selected for the council. In selecting the manager, in determining policies, and in cooperating and working with the manager, the council holds the key to the success or failure of the manager plan. In general, a higher type of personnel has been elected to the council under the manager plan than under either the mayor and council or the commission plan. After a visit to several council-manager cities, E. S. Bradford stated: "The evidence is overwhelming that the new councilmen are better than the old—less partisan, of broader gauge—and they stay longer in office, thus giving their city the benefit of their longer experience."¹¹ One of the reasons why the council has attracted men of greater ability under the council-manager plan is because the plan frees the council of responsibility for administrative details and permits the members to give their attention to general policies and programs.¹² The members feel that their time is being spent on fundamental questions and not on minor matters of a routine nature. The council-manager cities have thus tended to attract community leaders who are anxious to be of service to their government when the opportunity is presented. This is an advantage of this plan.

¹¹ E. S. Bradford, "Manager Cities in Action," 19 *Nat. Mun. Rev.* 529 (Aug., 1930). Also see A. Mandel and W. M. Cotton, "Dayton's Sixteen Years of City Manager Government," 19 *ibid.* Supp. 497 (July, 1930).

¹² See Harold A. Stone, Don K. Price, and Kathryn H. Stone, *op. cit.*, pp. 178, 238.

(b) The Mayor

The mayor under the council-manager plan has little power. He is usually selected by the council from their own number, but in about 50 cities he is popularly elected. He is the presiding officer of the council and is the city's official head for ceremonial, judicial, and military purposes. His salary is usually higher than that of the other members of the council. In Berkeley and Kansas City it is double; in Norfolk it is 50 per cent more. Cincinnati and Rochester permit the council to fix the amount the mayor is to receive over that he receives as a member of the council.¹³

Some cities have sought to give added prestige to the office of mayor by increasing his powers. This is usually done by giving him power to appoint certain minor officers. In Rochester he appoints the commissioner of deeds; in Berkeley he appoints the certified public accountant who audits the city's books at stated intervals; and in Cincinnati he appoints numerous officers and members of boards with the consent of the council. The mayor of Kansas City probably has more power than the mayor of any other city with the manager plan. He appoints the administrative code commission, the park board, the plan commission, and the municipal art commission. He has a suspensory veto power and he may pardon offenders sentenced in the municipal court.

In all cases, however, the mayor's position is of secondary importance, the manager being the actual head of the city. It is the manager, rather than the mayor, who appoints and removes subordinates and has charge of the conduct of the administration. In no case does the mayor have control over the manager—he does not appoint him, he cannot remove him, and he does not give him orders. Thus in a manager city the mayor is only the titular head of the city government.

(c) The Manager

The manager in a council-manager city is appointed by the council. The general practice is not to limit the council to residents of the city in selecting him. However, the charters of a few cities provide that he must be a resident of the city. Usually no mention

¹³ L. D. White, *op. cit.*, pp. 162-163.

of the residence of the person appointed as manager is made in the charter, the theory being that the council will consider ability, experience, and previous training, and will select the person best qualified for the position.

The constitutions of some states provide that no one may be elected or appointed to public office who does not fulfill the qualifications of a voter. In Arkansas and Wyoming it has been held that such a provision prohibits the appointment of a non-resident as manager. The Indiana constitution provides that all county, township, and town officers shall reside within their respective counties, townships, and towns. In considering a city manager to be an officer rather than an employee, the Supreme Court of Indiana held that, assuming the word "town" as used here is generic and includes the city, the officers named need be resident only when serving and not when appointed.¹⁴

About one-half of the council-manager charters make no attempt to lay down the manager's qualifications. Several cities, however, seek to define the qualifications in general terms. Many charters provide that the manager shall have "executive and administrative ability," "high business character and ability," "fitness and competency," or "proved business ability." Such general qualifications are of little value. Some charters state that preference will be given to persons who have had "practical engineering experience" or "technical engineering training." In a few cases more definite qualifications are specified. The charter of Monterey, California, provides that "no person shall be eligible to appointment thereto who has not had at least one year's special training therefor, or who has not served as city manager or as an assistant or deputy thereof." The charter of Grand Junction, Colorado, provides that "the city manager prior to his appointment shall either have had a successful experience as city manager of a city operating under the manager form of city government, or had a recognized successful business experience." The charters of East Detroit, Michigan, and Redwood City, California, require the manager to have had at least one year's experience as city manager or assistant manager. The New

¹⁴ J. M. Pfiffner, "The City Manager and the Courts," 12 *Pub. Management* 387, 425 (July, Aug., 1930).

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Rochelle, New York, charter, which became effective in 1932, provided that during the first three years no one could be appointed manager who had not had three years' service as a city manager. Logan, West Virginia, gains a similar objective by a charter requirement that the manager must be a member of the International City Managers' Association at the time of his appointment.¹⁵

The wisdom of attempting to lay down the qualifications of a manager in a charter seems questionable. Rather this should be left to the judgment and discretion of the council. Times change and the council should be free, in selecting a manager, to consider the problems then facing the city. In actual practice, experience in the general type of work which must be done by a manager has been an important factor in his selection. A large proportion of the managers have been engineers, since engineering problems have an important place in the government of a city. This is especially true of the smaller cities. In recent years approximately two-thirds of the persons receiving city-manager appointments have had previous governmental experience. Most of these have been promotions from the administrative staff within the city, but there has also been a decided tendency to appoint persons from administrative positions outside the city, such as county or state employees. Finally there are promotions of managers from one city to another.

City councils in selecting managers have tended to prefer local men. This is due in part to the feeling that home-town men should get home-town jobs and that tax money should not go to an "outsider." Of over 1000 city managers appointed up to the end of 1926, 517, or 53.97 per cent, were local, and 441, or 46.03 per cent, were non-residents.¹⁶ The ratio of local and non-resident appointments since that time has remained about the same, with a slight decline in the number from outside a city. In 1940, 42 per cent of the appointments were non-residents, the highest since 1930 when the number was 44 per cent.¹⁷ Forty-one per cent of the 135 city-manager appointments made in 1945 were non-residents.

There is a tendency to select a local man after the first appoint-

¹⁵ 12 *Pub. Management* 88 (Mar., 1930); L. D. White, *op. cit.*, pp. 166-177.

¹⁶ L. D. White, *op. cit.*, pp. 137-138.

¹⁷ *Municipal Year Book*, 1941, p. 571.

ment. For the first appointment, outside men are selected in well over 50 per cent of the cases. Of the 272 cities and counties in which the plan went into effect in the years 1929 to 1944 inclusive, 151, or 56 per cent, appointed out-of-town men as their first managers. Sixteen cities made appointments for the first time in 1940, and of these 10 were filled by out-of-town men. Of the 21 cities making appointments for the first time in 1941, 13 selected out-of-town men. As pointed out above, however, if we consider all city managers appointed during these years, the percentage of outside men becomes less, because of the marked tendency to select a local man after the first appointment.

It should be noted that the appointment of a non-resident does not necessarily mean the promotion of a manager from one city to another. In 1940 there were 35 out-of-town appointments out of the total of 84 managers appointed, but only 13 of the 35 were then serving as city managers. There were 43 out-of-town appointments out of the total of 120 managers appointed in 1941, but only 12 of the 43 were then serving as managers.

The preference of many councils for a local man has an important bearing on the type of personnel that can be attracted to the profession of city management. Young men can be encouraged to enter the profession as a career only if there is opportunity for promotion from one city to another. Now that this new form of government has been in operation a sufficient length of time, promotions are becoming more general. From 1930 to 1945 there were a total of 160 promotions of managers from one city to another. There were 25 such promotions in 1945.¹⁸ It is to be hoped that cities will make greater use of the practice of going outside and selecting an experienced manager.

There is thus encouraging evidence of promotion from city to city on the basis of ability and previous record. A few cases may be cited. Charles E. Ashburner, the first manager, began at Staunton in 1908 at a salary of \$2500; later he became manager of Springfield, Ohio; then of Norfolk, Virginia; and in 1923 he went to his fourth city—Stockton, California—at a salary of \$20,000. Ossian E. Carr was appointed city manager of Cadillac, Michigan, in 1914; he later served in turn in this capacity in Niagara Falls, New York;

¹⁸ *Ibid.*, 1946, p. 523.

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Springfield, Ohio; Dubuque, Iowa; Fort Worth, Texas; and Oakland, California. J. Bryan Miller, president of the International City Managers' Association in 1939, had at that time had twenty years of city-manager experience in six Texas cities. L. P. Cookingham, president of the Association in 1940, had served as manager in three Michigan cities before he was appointed city manager of Kansas City. Of the 609 managers in service at the end of 1945, 105 had had experience in other cities, and 37 of these had served three or more cities as manager. Three of the managers had served five cities.

The suggestion has been made that city managers be licensed, as has been done in the case of many of the professions. A state board would be established to license persons found to be qualified for this work, and only those so licensed would be eligible to appointment as managers. This, it is said, not only would raise the level of the profession of city management, but councils would hesitate to discharge a manager for political reasons when they knew that his successor must be chosen from a selected list of professionally qualified persons, any one of whom might be less amenable to political control than the incumbent. One objection to the licensing proposal is that it would tend to give legal sanction to a standard of medium or possibly minimum fitness.¹⁹ Another is that the profession is not sufficiently large, old, and specialized so that standards can be set, educational prerequisites specified, and tests devised.

City managers are selected for an indefinite tenure. As expressed in city charters, they serve at the pleasure of the council. Some charters provide that the manager may not be removed until he has served a specified minimum period, usually six months or one year.²⁰ The purpose of such a provision is to give the manager sufficient time to demonstrate his ability. An effort is made in some cases to prevent removal for political reasons by providing for a public hearing based on written charges. This is usually contingent upon the manager's demand for such a hearing. A public hearing

¹⁹ On the licensing of city managers, see 12 *Pub. Management* 441, 524, 557 (Aug., Oct., Nov., 1930); 14 *ibid.* 123 (Apr., 1932).

²⁰ In Norfolk and Sacramento, the manager may not be removed within twelve months except for incompetence, malfeasance, misfeasance, or neglect of duty.

is required in some cities if the manager is dismissed after a specified period of service—six months, one year, or two years. In some cities such a hearing is required if he is dismissed before completing his first year of service.²¹

While the manager may usually be removed by an ordinary majority of the council, in some cities a special majority is required. In Berkeley, six votes out of nine, and in Pasadena, five votes out of seven, is the requirement for dismissal of the manager. A few cities go so far as to require a unanimous vote.²² Such a provision would appear to be of doubtful value and wisdom. If a manager does not have the confidence and support of a majority of the members of his council, his value and effectiveness as administrative head of the city will be greatly impaired. Most managers would be unwilling to continue under such conditions.

In only a few cities does the recall apply to the manager. The recall of Manager Hewes of Long Beach, California, is the leading case of the use of this method to remove a manager. Applying the recall to this office cannot be defended. Popular control over the manager should be limited to removal by the council. Making the manager subject to recall will tend to make the office political; this was true in Long Beach, where a good administrator was recalled. Good administration, however, proved to be poor politics. A recent study of city-manager government in Long Beach, in considering this question, concludes:

... Mr. Hewes, while later conceded to have been scrupulously honest in all his dealings and an excellent administrator, found too little time to mix with people and had ideas of administration that were too "orthodox," in the opinion of many citizens. The city was not yet ready for so much efficiency or for the strict distinction between policy-forming and administrative functions that the manager tried to maintain. The citizens did not distinguish between problems of administration and matters of policy when they recalled him.²³

The manager plan is based upon the principle that it is desirable to separate politics and administration. If the manager is made

²¹ R. T. Crane, *Digest of City Manager Charters*, p. 15.

²² See *ibid.*, p. 15; L. D. White, *op. cit.*, p. 169.

²³ F. C. Mosher and others, *City Manager Government in Seven Cities* (1940), p. 335.

subject to the recall, this principle is violated. There is no more reason to make the manager subject to recall than the superintendent of schools. Democratic control can be secured in both cases through an elective board. Neither the office of manager nor that of the superintendent of schools should be a political one, and the use of the recall to remove an incumbent will tend in both cases to break down the distinction between politics and administration.

Uncertainty of tenure is a serious problem in attracting men to the profession and keeping them when attractive offers are made by private business. It was the hope that managerial terms would be longer than those of elective mayors, thus gaining the benefit of continuous service and experience. It is encouraging to note that there has been a steady increase in the average tenure for all city managers, from one year and seven months in 1915 to seven years and ten months for the 609 managers in service at the end of 1945. Forty-nine per cent of the managers in service at that time had had five or more years of manager experience, and 31 per cent had served ten years or more.²⁴ This included all cities served. A study of the turnover of city officials in cities of over 10,000 population shows that appointive managers have greater security of tenure than do elective mayors. The percentage of turnover in 1939 for mayors was 29.7 per cent and for managers 12.9 per cent; in 1938, for mayors it was 19.5 per cent and for managers 11.2 per cent; and in 1937, for mayors 30.2 per cent and for managers 16.2 per cent.²⁵

Although not as large as the salaries paid in business for comparable positions, the salaries paid managers are liberal as compared with those of mayors and of other appointive city employees. Some men are probably deterred from entering the field of city management because of the more liberal salaries in business, and some managers have resigned to accept more lucrative positions in private fields. Inadequate salaries, however, cannot be considered the problem in the case of appointive managers that it is for elective mayors. The salaries paid managers are higher, and the managers have the advantage of not having to conduct costly political campaigns to secure their positions. In 1946, the average salary of mayors in non-manager cities of 250,000 to 500,000 popu-

²⁴ *Municipal Year Book*, 1946, p. 525.

²⁵ *Ibid.*, 1940, p. 560.

lation was \$6700, and the average salary of city managers in cities in this population group was \$15,363; for cities of 100,000 to 250,000 population the average salary of mayors was \$6312 and of city managers \$11,249.²⁶ This same variation exists in all population groups, the salary of a city manager being about double that of a mayor in a mayor-and-council city of the same size. Among the high salaries paid their first managers were those of Cleveland and Cincinnati, each of which paid \$25,000; Rochester, New York, and Stockton, California, each of which paid \$20,000.

As stated in most charters, the manager is the administrative head of the city. Under such a grant of power "the principal functions of a city manager are to organize, to plan, to direct, to coordinate, to control, and to represent the administration in contacts with the council, with outside agencies, and with the public."²⁷ Unless a manager is careful he may find himself devoting too much time to such routine tasks as receiving complaints, answering inquiries, and writing speeches, and not enough to the major problems of over-all administration.²⁸ The successful manager is the one who is able to devote more time to general problems of management and who delegates to subordinates tasks which do not require his personal attention.²⁹ The administrative head of the city must have time for thinking constructively about the larger administrative problems. An assistant to handle routine matters has been found to be an effective means of conserving the manager's time and energy for the larger problems which he must consider.³⁰

RELATION OF THE CITY MANAGER AND THE COUNCIL

The manager is the administrative head of the city government. He appoints and removes the heads of departments and other subordinates, subject, of course, to the civil service limitations laid down in the charter or state law. It is the manager's duty to carry

²⁶ *Ibid.*, 1946, pp. 115 ff.

²⁷ 23 *Pub. Management* 259 (Sept., 1941).

²⁸ For an interesting study of the distribution of a city-manager's time, see H. R. Goslee, "The City Manager Profession," 14 *Pub. Management* 224 (July, 1932); 27 *ibid.* 291 (Oct.-Nov., 1945).

²⁹ 22 *Pub. Management* 97 (Apr., 1940).

³⁰ 23 *ibid.* 259 (Sept., 1941).

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out the policies; the details of administration are left to him, his responsibility to the council being only for results achieved.

Some councils have attempted to control the appointments made by the manager which, according to the principle of the manager plan and to specific provisions of most charters, are within his exclusive province. To avoid encroachment upon his authority in making appointments, some charters provide a penalty for a councilman who attempts to influence the manager in such cases. The charter of Alameda, California, provides that a violation of this provision by a councilman shall work a forfeiture of his office. Some charters make such interference a penal offense. Frequently, however, charters are silent on this question, implying, rather than stating, the independence of the manager in matters of administration.

Provisions stating that the council shall not interfere in appointments, and even those providing a penalty for such interference, are of little or no value.³¹ While charters may provide that members of the council may not suggest or dictate appointments, the council may dismiss a manager because they do not like his appointments. This is similar to cutting down the apple tree to get rid of the rotten apples. In such cases other reasons for the dismissal of the manager are given. The council will probably say that he is being removed because he is tactless, intolerant, domineering, unreasonable, and refuses to cooperate, when the real reason is that he has lived up to the principles of council-manager government and refused to submit to dictation in matters for which the responsibility is solely his.³²

Several cases have arisen where managers have resigned rather than submit to dictation from the council in matters which, by the charter, were left to their discretion. This attitude will aid in delimiting the sphere of action of the council and of the manager. The code of ethics adopted by the managers at their 1938 convention states: "The city manager, in order to preserve his integrity as a professional administrator, resists any encroachment on his control of personnel, insists on the exercise of his own judgment in accom-

³¹ On the Cleveland experience, see W. M. Tugman, "The Cleveland Experiment," 13 *Nat. Mun. Rev.* 255 (May, 1924).

³² Cf. Observer, "Watertown Politicians Dismiss City Manager," 19 *Nat. Mun. Rev.* 410 (June, 1930).

plishing council policies. . . ." The application of this principle is essential to the success of the manager plan. Before accepting appointment the manager should be certain that the council recognizes the need of separating politics and administration under the council-manager plan. If the council is unwilling to stay out of the field of administration the plan will not be successful. As one manager put it, the council cannot make a mere office boy of the manager and still hold him responsible for results.³³

The manager attends council meetings and takes part in the discussion, especially answering questions and giving information on current problems. He reports to the council so as to keep it informed regarding the operations and finances of the city. It is through these reports that the council obtains a general view of the operation of the administrative branch of the city government, and can determine whether its general policies and programs are being carried out. The reports also enable the members of the council to grasp the problems which are developing or are likely to develop in the future. The method of reporting to the council varies; some managers make written reports and others present information orally. The financial reports which are usually submitted monthly are generally made in writing.³⁴

It is generally said that the field of administration belongs to the manager, and legislation or the determination of policies belongs to the council. In actual practice, however, this is an oversimplification of the problem. In a statement of the principles of a sound working relationship between council and manager, based upon a survey made by the International City Managers' Association, it was pointed out that "the subject matter of municipal government cannot be divided into two categories, policy and administration, in order to define them as exclusive provinces of the council and manager, respectively. The council and the manager must work together on the same problems."³⁵ Many managers attempt to avoid giving advice on proposed legislation.³⁶ They present facts to

³³ 22 *Pub. Management* 10 (Jan., 1940).

³⁴ J. F. Willmott, "How City Managers Report to Council," 22 *Pub. Management* 358 (Dec., 1940).

³⁵ 24 *Pub. Management* 40 (Feb., 1942).

³⁶ According to Louis Brownlow, former city manager, "There is no time when the manager should not give advice on proposed municipal legislation,

the council, state the arguments for and against a proposed course of action, but avoid giving advice as to what should be done. But if the question is largely administrative, such as purchasing a certain type of fire equipment, the manager does make a definite recommendation. The dividing line between action of the council on administrative matters and questions of policy is not always clear. Is the location of a new jail and police headquarters—whether it should be adjacent to the city-county building or on another site—one of policy or of administration? Finally, even as to matters of policy, managers differ greatly in practice in making definite recommendations to the council.³⁷ A statement of the principles of the manager's relations with the council, based upon the survey made by the International City Managers' Association previously referred to, said: "Some managers attempt to avoid any positive recommendations of policy, but this tendency runs contrary to the apparent trend in modern government on all levels. Positive recommendations without any undue pressure on the part of the manager are essential to the formulation of sound municipal policies. . . . The manager should make it clear both to the council and to the public that the ultimate decision, however arrived at, is the council's policy rather than his own."³⁸ It is the council which must assume responsibility and answer to the people. A course of action having been decided upon by the council, it is the manager's task to carry it into execution, even though he believes it to be unwise as a policy. Continuous refusal of a council to follow the manager's recommendations in matters of an administrative nature would probably mean that he no longer had their confidence and that his

that is, he should give facts but should not advise which way the legislation should be handled." Charles A. Carran, city manager of East Cleveland, Ohio, has said: "The manager should give facts in regard to legislation and various pro and con arguments for the proposition, not trying to influence the council one way or the other." 20 *Pub. Management* 332 (Nov., 1938). Also see C. E. Ridley and O. F. Nolting, *The City-Manager Profession*, pp. 29-32. On the relationship of the city manager and the council, see the series of articles in *Public Management* beginning in the October-November, 1945, issue.

³⁷ For an interpretation of the council-manager plan by various managers, see Harold A. Stone, Don K. Price and Kathryn H. Stone, *City Manager Government in Nine Cities* (1940), pp. 16, 22, 60, 64, 72, 125, 162, 180, 248, 450, 522. Also see 28 *Pub. Management* 6, 39 (Jan., Feb., 1946).

³⁸ 24 *Pub. Management* 41 (Feb., 1942).

usefulness was greatly diminished. Resignation would probably be the course pursued by a self-respecting manager in such a case.

It is the manager who prepares the budget and submits it to the council for consideration. In consultation with his department heads he plans the city's activities for the following year and then prepares a budget which will make it possible to carry these plans into execution. Larger cities have a budget officer to assist the manager in this work. The council has the power, of course, to make any changes it sees fit in the budget submitted by the manager. In fact, however, councils have seldom changed the budgets submitted. After the money has been appropriated by the council, budget execution becomes a primary responsibility of the administrative branch. It is the manager's responsibility to see that as much service is rendered as is possible with the money available.

Some managers have attempted to encroach upon the council's power to determine policies. They have not been content to advise the council but have sought to dictate in matters of policy. When managers say that councils have failed to cooperate, it sometimes means that the council has stood on its prerogative of policy determination. Some managers have gone so far as to take a rather active part in the formation of public opinion. This is contrary to the principle of council-manager government and to the code of ethics adopted by the city managers at their 1938 convention. "The city manager is in no sense a political leader," the code states. "In order that policy may be intelligent and effective, he provides the council with information and advice, but he encourages positive decisions on policy by the council instead of passive acceptance of his recommendations. The city manager realizes that it is the council, the elected representatives of the people, which is entitled to credit for the fulfillment of municipal policies and leaves to the council the defense of policies which may be criticized." Failure to observe this principle has always caused difficulty. Speaking at the 1926 convention of the city managers' association, the manager of Wichita, Kansas, said: "A manager should always bear in mind that his relation toward his council is purely advisory in legislative matters. He may feel that certain legislative enactments are desirable and that certain policies are advisable, but if he has made his recommendation by argument before his board he is through. The responsibility

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of action on the recommendation rests upon the council. The manager's function is to carry out the mandate of the council."³⁹ The experience in several cities since that time demonstrates the soundness of this advice.

MERITS AND DEFECTS OF COUNCIL-MANAGER GOVERNMENT

The objection is sometimes made that the manager plan is undemocratic in that great power is placed in the hands of one man—a man who is appointed, rather than elected.⁴⁰ There is no sound basis for this objection, but it has been effectively used in many campaigns against the adoption of the manager plan. The argument is based on the fallacious principle that to be democratic a form of government must permit the electorate to select all officers, both elective and appointive. The citizen may have a controlled city government without the election of all such officers; in fact, the election of all of them does not guarantee democratic government—if by that term we mean a government over which the voters have control. Under the council-manager plan, the council, which is elected by the people, appoints the manager, holds him responsible for the administration of municipal affairs, and removes him when his services are no longer satisfactory. Important powers are placed in his hands, but they are administrative rather than legislative. Thus the political maxim, "For representation elect, for administration appoint," is applied. As has been pointed out above, in the execution of his administrative duties the manager is responsible to the council. There is no basis for the statement that the manager plan is undemocratic.

Another criticism that has been made of the manager plan is that the duties of administering the affairs of an American city are

³⁹ Earl C. Elliot, "Managerial Functions of a City Manager," 9 *Pub. Management* 185 (Mar., 1927). Also see C. W. Ham, "The Extent the City Manager Should Participate in the Determination of Public Policy," 12 *Pub. Management* 177 (Mar., 1930); H. J. Graeser, "Duties of the City Manager in Relation to the Council," 12 *Pub. Management* 183 (Mar., 1930); R. S. Childs, "The Best Practice Under the City Manager Plan," 22 *Nat. Mun. Rev. Supp.* 41 (Jan., 1933).

⁴⁰ Cf. E. A. Cottrell, "Advantages or Disadvantages of the Council-Manager Plan," *City Manager Yearbook*, 1931, p. 9.

so varied that it is impossible to secure a man who will be qualified for the position. No man, it is said, will be an expert in all aspects of municipal administration—health, fire, police, finance, and the other functions in which cities engage. The answer is that it is not the manager's task to do all of these multifarious things. Rather he should delegate the work to others and then see that it is done. It is the manager's task to supervise, and this is not an impossible task if qualified men are appointed as heads of departments. Furthermore, any weight that this criticism might have applies with equal or greater force to the other forms of city government. The manager plan is based on the principle that an abler and better-qualified man will be selected for the position of manager than has been secured for the elective position of mayor. Experience demonstrates that this principle holds in actual practice. The council-manager plan (the manager being appointed rather than elected, and having therefore no political debts to pay) has in practice resulted also in the selection of a higher type of men to serve as heads of departments. Council-manager government is thus the most satisfactory arrangement yet devised to meet the problem of governing the American city.

The manager cannot and should not be the only source of ideas for properly carrying out the administrative tasks of the city. An editorial in *Public Management* in 1941 advocated a greater democratization of management, in both public and private business. "Good organization," it stated, "still requires that authority and responsibility be integrated and that some official or office have the authority to make the final decisions on administrative policies. We simply suggest that it is good management to tap every source of ideas before decisions are made, and that the employees of any organization are one of the most fruitful of such sources."⁴¹ Obviously a city manager cannot be an expert in all the administrative processes involved in managing a city. But he can select his subordinates wisely and make use of their knowledge in performing his task of coordinating the work of the various administrative agencies and carrying into execution the policies of the council.

One of the arguments often used in opposition to the manager plan in charter campaigns is that adoption of the plan will probably

⁴¹ 23 *Pub. Management* 129 (May, 1941).

result in the selection of a non-resident for the position of manager. This is derisively referred to as carpetbagger government. Has the time come, opponents of the plan ask, when it is necessary to go outside the city to secure someone to run it? Such a man, they say, will be interested only in what he gets out of the city, will probably not become a property owner, and when he is called to another city will put his belongings—including the money he has saved—into his carpetbag and move on. While such a line of argument probably carries some weight in campaigns, it has no sound basis. The same argument applies with equal validity to the superintendent of schools. But cities do not hesitate to go to another city or state to secure a man for this position. Managing a city calls for as high a type of specialized ability and experience as does the managing of a school system. The aim should be to select the man best qualified by training and experience to manage the affairs of the city, regardless of the fact that he may be a non-resident.

The selection of an outside man as manager is also objected to on the ground that he will not understand local problems. The answer is that there is little need for the administrative head of the government to understand the local situation. It must be remembered that the manager is the administrative head and that the determination of policies—the field in which there is need for knowledge of local conditions—is left to the council. The administrative problems vary little from city to city, or even from state to state. Personnel administration, the purchasing of supplies, budget making, and the other administrative problems of the city require a man qualified by training and experience rather than by his knowledge of the local situation. An out-of-town manager will soon learn as much about local conditions as he needs to know, and he will have the further advantage of not having local connections which may embarrass him—old friends seeking favors now that he is in a position of authority. The experience he has had will be a valuable asset in any city, and as a general principle it is good policy for councils to secure an experienced manager if possible. The problems of management are similar in all cities; talk about the manager needing to know the local situation is frequently used as a smoke screen for those who believe in home-town jobs for home-town boys. An editorial in *The New York World Telegram* a few years ago pointed out that

"perhaps the best governed city in the United States, Cincinnati, has had two exceptional non-resident experts for the all-important job of city-manager—C. A. Dykstra and Colonel C. O. Sherrill—with results satisfactory to all except spoils politicians. The large corporations and banks of New York, the universities and hospitals, needing expert services, pay no attention whatever to residence in going after their officials. The city itself, we believe, is entitled to as good service as any other corporation. To refuse to employ a superior person because he doesn't live here is rather like refusing to buy a better fire engine because it was not manufactured here."⁴² Greater acceptance of this principle by councils in manager cities is desirable. As was pointed out earlier in this discussion, the real weakness of council-manager government in this connection is not the selection of an outsider as manager but the tendency to prefer a local man.

It is sometimes said that a weakness of the manager plan is the lack of men who are qualified by training and experience to serve as managers. Calling a man manager and giving him a high salary will not qualify him to be administrative head of the city, it is said. Unquestionably, the success of the manager plan depends upon the availability of qualified personnel for such positions. In the earlier history of the council-manager movement, and even today, some cities must select as managers men without previous experience in public administration. Even though specially trained men are not always available for positions as city manager, men of general executive and administrative ability have been willing to accept an appointment as manager who probably would not have been interested in an elective mayorship. Even though they had been willing to accept the latter, they probably could not have been elected, for, as will be pointed out in a later chapter, the ability of a candidate honestly and efficiently to administer the affairs of the office is often a minor consideration in the outcome of an election. Experienced engineers and business men have been willing to accept and been able to secure positions as managers who would have been unwilling to become candidates for mayor. With their tenure dependent upon a city council rather than a

⁴² *The New York World Telegram*, July 26, 1937, quoted in 26 *Nat. Mun. Rev.* 384 (Aug., 1937).

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popular election, they have had more faith that their administration of public affairs would be judged upon its merits. H. M. Waite, city engineer of Cincinnati, was secured as the first manager of Dayton. He was a graduate of the Massachusetts Institute of Technology and had many years of experience in railroad engineering and operation and mining engineering before he became city engineer of Cincinnati. Both of the managers of Cincinnati illustrate the high type of personnel it is possible to attract to the position of manager. Colonel Sherrill, the first manager, was a graduate of West Point, an army engineer, and at the time of his appointment he was superintendent of parks and buildings of the District of Columbia. When he resigned to accept a position in private business, Mr. Dykstra was appointed manager. He had been a professor of political science, and secretary of the City Clubs of Cleveland, Chicago, and Los Angeles; at the time of his appointment he was director of personnel and efficiency of the department of water and power in Los Angeles. Colonel Sherrill was induced to return as manager when Mr. Dykstra resigned to become president of the University of Wisconsin. It is questionable whether any of these men could have been secured for the headship of a city if the position were elective. In general, it must be said that a higher type of man has been attracted as city manager than as mayor. Obviously, however, there are exceptions to this generalization.⁴³

Although the statement that there are not enough properly trained and experienced men to accept positions as managers may have had some validity during the early years of the movement, it is gradually becoming less valid. There has developed in this country a profession of public management. A professional organization—the International City Managers' Association—was formed in 1914.⁴⁴ It has become a strong organization, maintaining a secretariat, and publishing a yearbook (*The Municipal Year Book*) and a monthly

⁴³ Norman Thomas and Paul Blanshard, in considering this question, say: "Nor were the two city managers in Cleveland's experience any outstanding proof that under this plan one gets abler executives than under popular elections. The home of Tom Johnson, yes, even of Newton D. Baker, has had mayors fully up to the standard of its city managers." *What's the Matter with New York*, p. 307.

⁴⁴ The International City Managers' Association has its headquarters at 1313 East 60th Street, Chicago, and is one of "The 1313 Group" of organizations in the field of public administration.

journal (*Public Management*). To meet the need for trained men in the public service, several universities began offering courses in public administration. Several schools now offer graduate courses designed specifically to train young men for careers in the public service. The International City Managers' Association now conducts several extension courses in municipal administration. There is increasing recognition that the management of cities can and should be improved and that the training of competent personnel is an essential part of that process.⁴⁵ Men who complete the course in one of the schools which offers special training for the public service usually serve an apprenticeship before being appointed to a managership. They may secure a position as assistant city manager, as secretary to the manager, as purchasing agent, or in some other subordinate capacity. From such work they may be promoted to the more responsible position of manager.

A weakness that may develop in the council-manager plan is the indirect election of the manager. The plan is based upon the principle that the people will elect a council, which in turn will select the best-qualified man for manager. The councilmen are elected because of the faith of the electorate that they will honestly and to the best of their ability select the man who is best qualified for the position. Suppose, however, that the removal of a manager becomes an issue in a campaign, or that the appointment of a certain person as manager is the chief issue. There have been campaigns in which candidates have been elected who were pledged for or against a certain person as manager. The result is the indirect election of the manager by the people. This is the evolutionary process through which the presidential electoral college has passed. There is a possibility that the city council may show no more independence in the selection of a manager than the electoral college does in the selection of the President. When this occurs, one of the chief advantages of the manager plan disappears—the city becomes a strong-mayor city in fact and a manager city in name only. Fortunately, the number of cases where councilmen have been elected who were pledged for a certain man as manager are not great; the

⁴⁵ "Training for the City Manager Profession," Final Report of the Committee on Training for the City Manager Profession, 13 *Pub. Management* 157 (May, 1931); C. E. Ridley and O. F. Nolting, *op. cit.*, chap. iv.

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cases where they have been pledged to dismiss a man then serving are more numerous.⁴⁶

The council-manager plan is usually advocated on the ground that it will mean efficiency in government. Another service rendered by it has been the weakening, if not the breaking, of the power of the political boss.⁴⁷ Cincinnati furnishes an outstanding illustration of the value of the manager plan in this regard. Unfortunately, the earlier experience in Kansas City demonstrates forcibly that this is not always the result. The first city manager was appointed entirely on a partisan basis. He frankly acknowledged this and administered the office to favor the party which controlled the council and placed him in office. As administered, the plan was not a success and Kansas City was pointed to as proof that the manager plan did not guarantee "good government." The hold of the Pendergast machine was not affected by the council-manager plan of government. The machine merely gained control of the council and the manager, and did not worry about the plan. As a result of the conviction and sentencing to prison of Mr. Pendergast in 1939, followed by a demand on the part of the citizens for better government, an outside manager was appointed in 1940. Under the new manager, who had served as manager in three other cities, there was a marked improvement of city government in Kansas City.

The absence of adequate provision for political leadership has been generally accepted as the most serious weakness of council-manager government. This is supplied by the mayor under the mayor and council plan. The council-manager plan is based on the assumption that the manager will be the head of the administration, with the mayor the prominent figure in municipal affairs. It assumes that the mayor will take an active part in initiating city policy, in presenting it to the voters, and in defending it against attack. Thus he will be the chief political figure in the city government. A few mayors in council-manager cities, such as Seasongood of Cincinnati, have realized the need of such leadership and have assumed the burden. Unfortunately, most mayors in manager cities have fallen down in this respect. As pointed out by Leonard D. White, it was

⁴⁶ Cf. R. O. Huus, "How City Manager Personalities Figured in Two Elections," 17 *Nat. Mun. Rev.* 18 (Jan., 1928).

⁴⁷ R. S. Childs, "The Deeper Purpose of the Council-Manager Plan," 15 *Pub. Management* 257 (Sept., 1933).

by the manipulation and use of his administrative powers—especially the appointing power—that the American mayor built up his power and maintained his leadership.⁴⁸ Under the manager plan his power over administration has been taken from him. Not only is there this loss of power over the matters that enabled him to maintain his leadership under the mayor and council plan, but he has lost his feeling of responsibility.⁴⁹ Since he no longer has a position of power, he does not feel it his responsibility to go before the people to lead public opinion and to defend the policies upon which the council embarks. There is little indication that the manager plan will produce such leaders to fight for the people as Tom Johnson in Cleveland, Golden Rule Jones and Brand Whitlock in Toledo, Pingree in Detroit, Blankenburg in Philadelphia, Hoan in Milwaukee, and La Guardia in New York—all products of the mayor and council plan of government.

Some managers have attempted to supply this political leadership. The outstanding example of a manager who did this was City Manager Hopkins of Cleveland.⁵⁰ This is one of the things which finally led to his dismissal as manager. The manager should not attempt to supply this leadership; it is contrary to the fundamental principle of council-manager government, namely, that he is head of the administrative branch of the city and that policies are to be determined by the legislative branch.⁵¹ Some of this political leadership in council-manager cities can be furnished by active and alert citizens' organizations. This has been done in part in some cities by city-manager leagues or similar organizations devoted to the support of the manager plan. They have mobilized and helped to make articulate public opinion in such cities.⁵²

The council-manager plan of municipal government is the best

⁴⁸ L. D. White, *op. cit.*, pp. 165-166.

⁴⁹ Cf. S. B. Story, "The Need for a Strong Mayor," *City Manager Yearbook*, 1931, p. 25.

⁵⁰ "Five Years of City Manager Government in Cleveland," 18 *Nat. Mun. Rev.* 203 (Mar., 1929).

⁵¹ Cf. E. D. Ellis, "The City Manager as a Leader of Policy," 15 *Nat. Mun. Rev.* 201 (Apr., 1926).

⁵² On the absence of political leadership as a weakness of the manager plan and the possibility of this being supplied by citizen organizations, see C. K. Matson, "Progress Under the City Manager Plan," 26 *Nat. Mun. Rev.* 113 (Mar., 1937).

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plan yet devised. It has been termed "the one political invention of America in the past one hundred years" and the "greatest advance by American cities since the Revolution." In the opinion of Charles E. Merriam, council-manager government is "the greatest achievement of American administration"; and a report of the National Municipal League on forms of government has referred to the manager plan as "America's chief contribution to municipal administration."⁵³ On the basis of the record it is worthy of such praise. While the earlier experience of Kansas City demonstrates that it does not guarantee efficient, non-political administration of public affairs, this is the exception rather than the rule. The council-manager plan is unquestionably the best form yet devised; during the past forty years it has met with marked success, and it appears to have an even greater future.⁵⁴ It does not guarantee "good government"—no plan or form of government can do this; but experience demonstrates that the possibility and the probability of efficient administration of public affairs are much greater under the council-manager plan than under any other form of municipal government yet devised.

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Village Government

Generalizations about the problems of municipal government and the methods of meeting them are difficult—and sometimes inaccurate—since there are over 16,000 incorporated places in the United States, varying in size from the small village or borough with less than 100 population to New York City with its 7,454,995 people. Obviously the problems to be met and the methods of meeting them differ in the 10,083 incorporated places under 1000 population and in the five cities of over 1,000,000 population. Some problems and principles are common to all incorporated places regardless of their size; tort liability may be cited as illustrative. Others, however, apply only to cities in certain population classifications, either very large cities or small villages. In the present chapter attention will be directed to the problem of governing the small municipality—boroughs, villages, and incorporated towns. In the following chapter the problems arising in large cities—metropolitan areas—will be considered.

TYPES OF SMALL MUNICIPALITIES

The less populous urban areas which have been incorporated are generally given the title of village, but in Connecticut, New Jersey, and Pennsylvania they are known as boroughs. And in several states they are known as towns or incorporated towns. The names applied to these small municipalities in the various states are often conflicting and confusing. Thus in Kansas, all municipal corporations are called cities; the terms "town" and "village" in that state refer to places laid out in lots and blocks but which are not incorporated.¹ In Iowa, municipal corporations having a population

¹ *Gen. Stat. Kan.*, 1935, chap. lxxix, sec. 102.

of less than 2000 are called towns, while town sites which are platted but not incorporated are known as villages.² The term village usually refers to an incorporated municipality, but it is sometimes used in the statutes in its "ordinary and popular sense to describe a community which has no separate existence recognized by law."³ For purposes of simplicity, all small incorporated municipalities will be referred to in the present discussion as villages.

There are two chief types of villages, the suburb or satellite of a large city, and the rural village. Although most rural or non-suburban small municipalities are located in agricultural communities and are referred to as agricultural villages, others may be classed as resort, mining, industrial, and lumber villages.⁴ The special problems arising out of the development of satellite cities and villages were discussed in Chapter I and will be considered further in the following chapter. The present discussion is directed primarily to the other types of villages.

NUMBER OF SMALL INCORPORATED PLACES

In 1940, there were in the United States 13,288 incorporated places having less than 2500 population; and of these, 10,083 had less than 1000 population. While the number of small incorporated places is great, the number of persons living in them is relatively small as compared with the total national population, or that living in cities of over 2500 population. These 13,288 incorporated places had only 7.1 per cent of the national population in 1940, whereas the 3464 incorporated places of over 2500 population had 56.5 per cent of the national population. In addition to the small incorporated places, there are many unincorporated villages or hamlets. The Census Bureau reported that there were 3594 unincorporated communities in the United States in 1940, each having a population of 500 or more. The total number of unincorporated communities has been estimated at 43,000, with a population of 5,350,000.⁵ Since they do not constitute legal entities they are problems of rural rather than urban government.

² *Code of Iowa*, 1939, sec. 5623.

³ Eugene McQuillin, *Municipal Corporations*, vol. i, sec. 132.

⁴ Cf. D. R. Jenkins, *Growth and Decline of Agricultural Villages* (1940), p. 4.

⁵ T. Lynn Smith, "The Role of the Village in American Rural Society," *7 Rural Sociology* 10 (Mar., 1942).

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The median population of incorporated places in the various states also indicates the importance of the small village. William Anderson found that in 32 states the median population of incorporated places was under 1000.⁶ The median in a series is the middle one, half the cases falling above and half below it. In 32 of the states, one-half or more of the cities and villages had less than 1000 population. In nine states he found the median population to be less than 500. In North Dakota, for example, one-half of the 332 incorporated places had a population under 312, which was the median in that state.

A question which arises concerns the future of the small village. Will the automobile and the hard road mean the decline and eventual disappearance of the agricultural village which depended on the surrounding farmers for its sustenance? Will improved methods of transportation mean that the farmer will no longer depend upon the neighboring village but will go to larger cities for purposes of trade, amusement, and worship? Writers have disagreed not only as to what will happen to the small village but also as to what has been happening in recent decades. They have disagreed as to the interpretation of the available data.⁷ The accompanying table, compiled from the reports of the United States Bureau of the Census, shows for the last decade a loss in the number and total population of places of less than 1000, and an increase for those in the 1000 to 2500 population group. On the basis of percentage of the national population both showed a loss. Any decrease in the number of villages and the total population living therein is accounted for in part by the villages that grow and pass into the city category. This rather than decadence appears to account for any apparent disappearance of the American village.⁸ The Census Bureau pointed out that the proportion of the national population living in rural territory declined from 43.8 per cent in 1930 to 43.5 per cent in 1940, and that this reduction was attributed entirely to the loss of population, in absolute numbers as well as proportion, in small incorporated places of less than 1000 persons.

⁶ William Anderson, *The Units of Government in the United States* (1942); also see the 1945 edition of his study, p. 29.

⁷ Edmund de S. Brunner, "Do Villages Grow?" 1 *Rural Sociology* 506 (Dec., 1936).

⁸ *The New York Times*, Aug. 6, 1944, p. 38.

INCORPORATED PLACES OF LESS THAN 2500 POPULATION

| | 1930 | | | 1940 | | |
|---------------------------------------|---------------|-------------------------|--|---------------|-------------------------|--|
| | <i>Number</i> | <i>Popula- tion</i> | <i>Per- centage Total Popula- tion</i> | <i>Number</i> | <i>Popula- tion</i> | <i>Per- centage Total Popula- tion</i> |
| Incorporated places of 1000 to 2500 | 3,087 | 4,820,707 | 3.9 | 3,205 | 5,026,834 | 3.8 |
| Incorporated places of less than 1000 | 10,346 | 4,362,746 | 3.6 | 10,083 | 4,315,843 | 3.3 |

As pointed out in an earlier chapter, however, the decrease in the percentage of our population living in incorporated places of less than 2500 population has been so slight that it does not support what appears to be a popular belief that the village is disappearing from the American scene.⁹

GOVERNMENT OF SMALL MUNICIPALITIES

The procedure, including the minimum population, required for the organization of municipal corporations is provided in the statutes of the various states. The means by which villages, boroughs, and incorporated towns may or must become cities is also found in state laws. The minimum population required for the creation of a municipal corporation is small, generally varying from 100 inhabitants in Minnesota, North Dakota, Alabama, and Virginia, to 300 in Michigan, Utah, and Washington, and 500 in Arizona. The minimum required for cities is higher—10,000 in New York, Pennsylvania, and Texas; 5000 in Ohio, Virginia, and Louisiana; 3000 in Missouri and Minnesota; 2500 in Arkansas; 2000 in Alabama; 1500 in Washington; and 1000 in Illinois, Nebraska, and Montana. In

⁹ See chap. i.

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some states it is mandatory that a village or borough become a city when it reaches the minimum population requirement; in others it is optional. The minimum population requirement for a village in Illinois is 300 inhabitants, and for a city it is 1000. The village of Oak Park in that state has a population of 66,000 and the town of Cicero has 64,000 inhabitants. Norristown, Pennsylvania, remains a borough with a population of 38,000; the minimum population for cities in that state is 10,000. These and other incorporated places have not seen fit to abandon village and borough organization and incorporate as cities, even though their increased population would permit them to do so.

The governmental organization found in small municipal corporations is relatively simple as compared with that in cities. The variation in organization between large cities and villages is in the degree of complexity of organization rather than in principle. Villages, as in the case of cities, operate under the mayor and council, commission, and council-manager plans of government, with the mayor and council plan being most generally used. In 1945 there were 95 municipalities of less than 2500 population using the manager plan of government; 23 of these had a population of less than 1000. In Illinois, one of the states making the most extensive use of the commission plan, 22 of the 73 commission-governed cities have a population of less than 2500; 12 have a population of less than 1000. In view of the great number of villages in this country, it is apparent from these figures that the mayor and council plan, or some variation thereof, is the predominant system of government.

The council in villages using the mayor and council plan is smaller than in cities, there being three members in Connecticut, Virginia, New York, and Wisconsin. Election of the council at large is generally used, but some elect by wards. The members of the legislative body are known as trustees in several states, rather than as councilmen or aldermen as in cities.

The chief officer in villages is generally called the mayor as in cities, but in some states he is known as president of the village board of trustees. In both Indiana and Missouri he is selected by the village board, being known as president in the former state and as chairman in the latter. Generally, however, the practice is for the mayor to be elected by the voters, as in the case of cities.

Since the functions performed in villages are few, the administrative organization is simple and the number of employees small. In addition to the elective legislative body and chief executive, there is usually a clerk and treasurer. Many services performed by cities either are non-existent in villages, or are performed by other units of government, especially the county, township, and special district.

In providing a system of local government, the states have recognized the fact that villages or small urban communities do not need the highly developed functions and administrative organization found in cities, but that they do have needs which differ from those of rural areas. The powers conferred upon them fall midway between the few granted to rural areas and the many exercised by cities. The administrative organization provided in the state statutes is also simple, with few offices or departments established. A street commissioner will be found in villages, but in smaller places his activity is limited to grading and oiling dirt streets, no pavements being provided. In very small villages this work may be done by the county or township, the municipal government not functioning in this field. Even in larger villages, the street department has only a small staff to carry on its work. The police and fire protection provided in the surrounding rural territory is inadequate in the village. The added police protection may be only a marshal or night watchman; and in the smaller villages there may be no added service in this field, the constable and sheriff meeting the problem as in rural areas. Fire protection in villages is usually provided by volunteer firemen who make use of simple equipment.

The services rendered by village governments are slightly greater than those provided by the county and other rural units for residents of non-urban areas. They are simple, however, as compared with those found in large cities. Specialized fire and police services are needed and provided in large cities but not in villages. The result is that the services performed in villages are more like those of the rural units than of large cities. Such services as subways or elevated highways are not provided in villages because they are not needed. Others, such as swimming pools and art museums, are not provided by villages because the unit is so small, on the basis of either the number of people or the ability to support government, that the service cannot be justified.

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Villages present the least satisfactory picture in the field of public health.¹⁰ Many villages in the population group under 1000 have neither a public water supply nor a sewer system. The residents continue to depend upon outside toilets, and with individual wells make use of ground water as a source of supply. The need of community action becomes greater in the village than in the rural territory; while outside toilets and ground water may be reasonably safe in the open country they become serious risks in the village. In the smaller village, however, the number of persons and the resulting ability to support community services either do not justify or make burdensome providing the services which will be found in the larger cities. The supervision of the milk and food supply in villages is generally inadequate. There are no boards of health and sanitary inspectors as in the case of larger cities.

Recreational facilities, especially for the young, are inadequate in villages. Parks and playgrounds are provided by cities as government services, but not by villages. The need is less urgent in the case of villages, since the living and housing conditions are more satisfactory. One result of the failure of the government to provide facilities is that the young people drive to neighboring cities to find amusement, including the use of municipal swimming pools and golf courses.

The village, from the point of view of governmental services rendered, is not a desirable place in which to live. As a result of this in part, but especially of the lack of economic opportunities, the young people have drifted from the village to the larger cities. This has meant that many of the younger persons who might supply vigorous and effective leadership in governmental and civic affairs are lost. In the agricultural villages, an older and more conservative group remains. Their chief interest is to keep village taxes down, and this means opposing new improvements and added services, such as paved streets, public inspection and supervision of the milk supply, and recreational facilities.

COOPERATION BY SMALL MUNICIPALITIES

Government on as small a scale as is found in a village faces difficulties. The number of employees is so small that an adequate per-

¹⁰ *Annals of the American Academy of Political and Social Science* (1936), pp. 591-98.

sonnel system is not practicable. Part-time service is necessary in some cases, the work not being sufficient to warrant the payment of the salary of a full-time employee. This may be met by two or more villages joining in securing the services of a qualified employee, such as an engineer or a village manager. Villages may also improve their method of selecting government personnel by cooperating with other units. This may be done by using the facilities of a state civil service commission in selecting village employees. Examinations can be given and the candidates rated by the state commission. This principle of state administration for merit systems in local governments will be discussed in a later chapter.¹¹

Obviously no satisfactory locally administered merit system can be provided in a jurisdiction having as small a number of employees as do most villages. Another method of meeting this problem is that used in California, where the State Personnel Board has been authorized to enter into agreements with local governments and render personnel services for them. Several local governments in that state have made use of these services. This principle offers a method of meeting the personnel problem in small villages.

Personnel services for villages might be performed by another local unit, the county or a neighboring large city, on a contract basis. In Los Angeles County, the County Civil Service Commission has contracts with several cities in the county and renders personnel services for them. County civil service commissions might be established by state law, with jurisdiction over all municipalities in the county having less than a specified minimum population.

Villages might work out their personnel problems through a state municipal league or through county or district leagues. Their combined needs would be sufficient to support a competent staff to develop and administer a system for selecting employees. The Michigan Municipal League now performs certain personnel services for cities in that state.

Villages are handicapped in other aspects of public personnel administration because of their small number of employees. Adequate training programs cannot be provided by individual villages. They must either cooperate in establishing a training program, or attempt to use the facilities of another unit on a contract basis. If they are to adopt a pension system, it must be on a cooperative basis

¹¹ See chap. xxvi.

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or under some state-administered plan. Actuarial principles cannot be applied to a unit of government having two or three employees.

The amount of material purchased by one village is so small that prices are higher than they would be if larger quantities were purchased. This may be met by villages making use of the purchasing facilities of some other unit—the state purchasing department, the county, or a neighboring city—or by some cooperative plan of purchasing, as by all the cities and villages in a county, or through a state municipal league.

RELATION OF VILLAGES TO TOWNSHIPS

A more satisfactory integration of village and township government is needed. The relation between townships and municipal corporations varies in the different states. Generally, the cities are entirely independent of the townships, and in a few states all or most of the villages or boroughs have the same position. Boroughs as well as cities are independent of townships in Pennsylvania; and in New Jersey, Wisconsin, Minnesota, and the Dakotas, most of the villages and boroughs are independent. Oklahoma provides that no city or incorporated town of over 1500 inhabitants shall be included within the corporate limits of the township. Generally, however, villages remain part of the townships, as in New York and Michigan; and in some states all or most of the cities, as well as the villages, are parts of townships. This is the case with all cities and villages in Indiana, and with nearly all in Illinois, Ohio, and Nebraska. Although cities in Illinois and Kansas are usually part of the township in which they are located, the larger places may be organized as separate townships. Where compactly built areas are incorporated as villages, boroughs, or cities, there seems little justification for having both township and municipal authorities exercising jurisdiction over the area. The township officers perform few if any functions within most incorporated municipalities.

In the case of boroughs, villages, and small cities, another solution has been suggested for the integration of the township government and that of the municipality. In 1930 Theodore B. Manny suggested the establishment of the rural municipality, which would be a rural community consisting of a group of people in a local area

tributary to the center of their common interests.¹² It would include both village and rural territory, the farmers' trade center, and its surrounding countryside. It would involve the application of the principle of city-county consolidation to the relations of villages and townships. But use would be made not of "standardized blocks of the earth's surface such as townships, but real groups of living human beings as nearly homogeneous in their common interests as is possible to obtain."¹³ The rural municipality offers a means by which local governments might be simplified in rural areas.

The incorporation of rural municipalities whose boundaries included a central village and the surrounding trade territory might also help to remove the antagonism which often exists between farmers and village residents. Many farmers look upon the neighboring village as a parasite that depends upon them for a living. During depressions they point to the heavy relief load in the village and resent paying taxes for the villagers' support. The village church is often looked upon by the farmer as snobbish and unfriendly. Domination of county and township elections by city and village voters and the election of non-farmer candidates are often resented. The farmer points out that these officers serve the rural area primarily, yet the urban vote is an important factor in their selection. Village resentment toward the farmer usually arises when he begins to go to the county seat or some other city to trade, or when he orders from mail-order houses. The attitude taken by the villagers—especially the merchants—is that he is disloyal to his community. Others express their resentment by saying that the farmer "thinks he is too good to trade in this town—he has to go to the city." The urban-rural conflict is not limited to large cities. It may be found in its bitterest stages in small villages. The removal of this friction and the development of good will might be furthered by uniting the rural area and the village politically into one unit of government. And in those states having townships it would remove one layer of government, the new rural municipality replacing both the village and the township.

A difficulty to be met in the creation of rural municipalities would be the burden of support. As the burden of government is greater in

¹² T. B. Manny, *Rural Municipalities*, chaps. xii-xvi.

¹³ *Ibid.*, p. 221.

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urban areas, even in villages, than in rural territory, the new government would spend a disproportionate share of its effort and money in the villages. The rural population would object to any plan which meant they must support village government. And the farmer may, and generally does, believe that under a property tax, his real property pays more than its share as compared with intangibles owned by residents of the villages. This argument has frequently led to defeat of consolidated schools. Rural residents may look upon a larger unit of government covering a village and its surrounding territory as a scheme to get the farmer to support the village government.

CONCLUSION

Methods of strengthening and improving governmental administration in villages have been suggested in the preceding discussion. Another approach to the problem is to question the wisdom, especially from the economic point of view—the ability to support government—of keeping small villages alive. Serious consideration should be given to the minimum population required for villages to be created and to function. Several states now require a population of 100 for villages to be created, but permit them to continue to function even though the population falls below that number. A minimum population of 500 might be required in most cases, with other existing units performing needed functions in small urban areas having less than this population. The small villages (under 500 or 1000 population) either perform no functions or perform them so poorly that the desirability of continuing them as units of government can be questioned. Efforts at strengthening and improving administration could then be directed to improving conditions in the larger villages (1000 to 2500 population). Since the village is not an important unit of government on the basis of number of people served, functions performed, or cost, it has been largely neglected in the past. It deserves more consideration in the future.

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Governmental Problems in Metropolitan Areas

In an earlier chapter reference was made to the growth of great metropolitan areas in the United States.¹ These are the areas which have a central core city surrounded by several suburban or satellite cities. Among the problems which arise in such areas is the duplication of layers of local government. The citizen may find himself subject to and paying taxes for the support of several units of local government, such as the city, the county, the school district, and the special district. Another problem arises from the existence within the area of several governments of the same type, such as cities. Problems which should be met by one government having jurisdiction throughout the area are entrusted to several city governments, each working independently of the others, and often in conflict. Health and sanitation, law enforcement, and traffic may be cited as illustrations. In the present chapter the particular problems arising in metropolitan areas will be considered, attention being centered on methods by which these problems have been met in some cases and might be met in others.

The need of simplifying the local government structure is especially apparent in metropolitan communities. Around the parent or core city in these communities there has developed a group of satellite cities, each separately incorporated and governed. In recent years the greatest increase in population in metropolitan areas has been outside incorporated cities, either the central city or the suburbs.²

¹ See chap. i for a discussion of population growth and intercity population movements.

² Albert Lepawsky, "Chicago—Metropolis in the Making," 30 *Nat. Mun. Rev.* 211 (Apr., 1941).

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The people are settling in rural territory so as to avoid city taxes. They increase the governmental problem in the metropolitan area, however, and much of the resulting cost is borne by the incorporated areas. The compactly settled unincorporated area in the metropolitan region is a problem which is now developing.

The increase of population in metropolitan communities has taken place in satellite cities or in the rural territory which has not been organized. The financial disadvantage to the central city of this suburban trend was discussed in Chapter I. It was pointed out that cities had constructed public improvements on the basis of an expanding population and resulting tax base within the city. Individuals had constructed apartment houses and other rental property on the basis of an expanding population. The anticipated increase in population has come, but it has been in the metropolitan area outside rather than within the central city. The property owner in the central city has found himself without tenants; tax delinquency has resulted. The suburban trend has caused property values in the parent city to decrease. Cities which have undertaken financial obligations on the basis of a predicted increase in population have been disappointed. The suburban trend has caused serious difficulties for the parent city.

A few figures illustrative of the suburban trend may be cited. In the period 1920-30, the 78 cities in Illinois in the 2500-to-5000 group increased in population 32.2 per cent; 93.4 per cent of this increase, however, took place in the 25 cities of this size which were suburbs of Chicago or St. Louis. Twenty-three of the remaining 53 places in this group actually decreased in population during this period. The 32 places in Michigan which fell in the 2500-to-5000 population group had an increase of 31 per cent in the period 1920-30. But 93.5 per cent of the gross increase for places of this size occurred in four small cities which were suburbs of Detroit. Thus four of the 32 places furnished 93.5 per cent of the increase for places in this population group, and the four were all suburbs of the city of Detroit.³ The same situation was developing in other metropolitan areas, differing only in degree. The 1940 census shows that

³ R. D. McKenzie, *The Metropolitan Community*, one of a series of monographs published under the direction of the President's Research Committee on Social Trends.

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this development continued during the past decade. A study of the population increase of the 92 cities having over 100,000 population shows they have grown less rapidly than have the counties in which they are located. The increase has been in the suburban incorporated areas and in the unincorporated territory outside any city. Four of our ten largest cities showed an actual decrease in population, and in two others the increase was negligible. In all six cases, however, there was an increase in the metropolitan area, the growth taking place outside the core city.⁴

The first question to be considered is the governmental problems arising from the multiplicity of municipal governments in metropolitan areas. Water supply, sewage disposal, transportation, health, police, and fire administration are problems which can be met satisfactorily only by united action, by a plan which covers the entire region. A sufficient water supply may be available for the whole community, but some of the cities or villages in the region may not have access to it. This is illustrated by metropolitan regions located on lakes or rivers. The supply is adequate, but it is not readily accessible to some of the municipalities which develop on the edge of the parent city. Duplication of filtration plants, pumping stations, and distributing systems results in unnecessary capital expenditures. A single water system for the metropolitan region would be the proper method of meeting the problem. In their study of the Chicago metropolitan region Professor Merriam and his associates found that the 167 public water systems of the region "are constructed and operated at costs unnecessary under a unified system of water supply, and with a type of service capable of substantial improvement under a regional organization."⁵

The Commission to Investigate County and Municipal Taxation and Expenditures in New Jersey declared that there are far too many small local units of government. After pointing out the difficulty of action by a large number of municipalities, each with restricted territorial jurisdiction, in dealing with such matters as water supply, sewage disposal, fire and police protection, the con-

⁴ See chap. i. See also T. H. Reed, "The Metropolitan Problem in 1941," 30 *Nat. Mun. Rev.* 400 (July, 1941).

⁵ C. E. Merriam, S. D. Parratt, and Albert Lepawsky, *The Government of the Metropolitan Region of Chicago*, p. xvii.

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struction and maintenance of roads, and public welfare work, the report said:

Few municipalities can really plan and execute proper systems for any of these purposes, and as the attempt is made, particularly in the metropolitan areas, municipal neighbors are encountered on all sides who are engaged, at great expense, in trying to do the same things. Naturally there is duplication of facilities, waste of funds and of effort, when a given territory and a given population in that territory are to be supplied with various services by a number of small, competing, inadequate jurisdictions. Naturally, also, the aggregate of these small plans will seldom be as satisfactory in design or in execution as would be a more comprehensive plan for the larger group.⁶

The sewage problem also illustrates the need of unified action in a metropolitan region. Separate action by each of the municipalities in the region leads not only to added cost but often to action by some which is detrimental to the welfare of others. The obvious and sensible method is to treat this as a metropolitan problem calling for united action, rather than one to be dealt with by several independent municipalities, each considering its own interests and not those of its neighbors and of the region as a whole.

Law enforcement cannot be met in a satisfactory manner by the independent action of several cities in a metropolitan region. Professor Merriam and his associates found not only duplication of effort and lack of cooperation but actual conflict of authority among the 350 police forces in the Chicago region. Traffic control in a metropolitan region presents a welter of hopeless confusion for the motorist. In one municipality he will be arrested if he turns left on a red light; on the same road a mile away in another municipality he can turn left only on a red light. Speed, parking, and other regulations show this same variation. With crime organized as it is in our large cities, and with the improved methods of transportation—the automobile and the improved highway—a unified plan of law enforcement for the metropolitan region is needed.

A study of the transportation problem in a metropolitan region indicates this same need of governmental integration. Where each

⁶ Commission to Investigate County and Municipal Taxation and Expenditures, *The Organization, Functions and Expenditures of Local Government in New Jersey*, Report No. 1, p. 175.

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city in the region acts independently, there is the absence of a system of highways. The result is a "jumble of the main highways of the metropolitan community." The situation has been described by the Committee on Metropolitan Government of the National Municipal League as follows:

Where a wide street should be built to serve as a connecting link in a great metropolitan highway, a narrow, inadequate street is often constructed, postponing perhaps for decades the development of arterial highways. Great metropolitan highways have come about more or less by accident and are all too often circuitous and unsatisfactory. A wide stretch built by one municipality or county runs into a narrow roadway built by another. A length of good pavement in one jurisdiction is succeeded in another by a stretch of broken pavement resulting from bad construction or failure to repair. Right-angle turns, jogs or steep grades confront one at every boundary.⁷

The same situation exists in a metropolitan region relative to other governmental services. The duplication of effort, the unsatisfactory service, and the unnecessary cost resulting from the independent action of several cities apply also to health, fire, public welfare, parks, and school administration. As stated in the report of the New Jersey Commission to Investigate County and Municipal Taxation and Expenditures, which has been referred to before, "The pressure of modern economic and social conditions has brought into prominence an array of practical administrative and organization problems which are quite beyond the jurisdiction—and often the resources—of these small independent communities. These larger problems can be adequately dealt with only by a recognition of their scope and by the creation of commensurate administrative jurisdictions."⁸

Another difficulty which arises because of the great number of independent municipalities in a metropolitan region is the in-

⁷ Committee on Metropolitan Government of the National Municipal League, *The Government of Metropolitan Areas*, p. 35. Also see Victor Jones, *Metropolitan Government* (1942). These two studies are the best sources of information on the problem of government in metropolitan areas.

⁸ Commission to Investigate County and Municipal Taxation and Expenditures, Report No. 1, p. 37.

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equality of financial ability.⁹ The tax resources of the whole region may be sufficient, but the difficulty may lie in the fact that they are not evenly distributed. A wealthy residential suburb will have adequate taxing and borrowing power, or even greater than is needed. Other suburbs which are inhabited by the poorer working classes may find their taxing and borrowing resources inadequate. The result is that these poorer municipalities are often forced to forego many desirable if not essential services. It should also be noted that the very poor remain in the central city. Generally it is the persons in the higher economic levels who go to the suburbs. These people, by going to the suburbs, escape their rightful share of the burden of government in the central city where they work and make their living, and in doing so increase the governmental services and the resulting tax burden of those who remain.¹⁰ If the metropolitan region were treated as a unit, the burden would be equalized. The need is for an integration of the financial resources of the entire region so that essential governmental services may be developed adequately throughout the area.¹¹

The question arises as to what can be done to remedy the situation resulting from the development and organization of many cities in a metropolitan area. The advantage of a unified treatment of common problems appears apparent. But can such treatment be secured when the function is entrusted to several city governments, each acting independently of the other? If not, what changes can be made or what governmental devices can be used to remedy the unsatisfactory situation referred to in the preceding paragraphs? The remedies most generally proposed to meet the metropolitan area problems are annexation of the satellite cities to the central core city; the use of the borough plan to secure consolidation; the formation of special metropolitan districts; functional consolidation on a cooperative basis, with one government (central city or county) performing certain functions for other governments on a contractual

⁹ On this question, see Committee on Metropolitan Government of the National Municipal League, *op. cit.*, pp. 37-41. The discussion above is based largely on this study.

¹⁰ Philip H. Cornick, "New Exodus to Suburbs Near," 35 *Nat. Mun. Rev.* 4 (Jan., 1946).

¹¹ For a critical analysis and evaluation of this question, see Herbert A. Simon, *Fiscal Aspects of Metropolitan Consolidation*, chap. ii.

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basis; and a change in the city-county relationship in metropolitan areas by means of city-county consolidation. Consideration will now be given to each of these proposed remedies.

ANNEXATION

The expansion of the political boundaries of the parent city offers one method of meeting the situation.¹² By this method the number of independent municipalities in the metropolitan region can be reduced and unified control obtained. Such annexations have in some cases been secured by special act of the legislature, but generally they are secured under a general act. While such annexations are usually voluntary, in some cases territory has been forcibly annexed. Thus Allegheny City was forcibly annexed to Pittsburgh in 1906.

The procedure for the voluntary annexation of territory varies in the different states. The statutes generally provide that when the people of either an incorporated or an unincorporated territory petition to be annexed by a municipality, the question shall be submitted to a vote of the people of the territory which it is proposed to annex. Although provision is made in some states to submit the question to the voters of the city to which the territory is to be annexed, usually the consent of the governing body is sufficient.

The most common type of forcible annexation is that in which the legislature, by legislative act, designates the boundaries of the enlarged city. This was the method generally used before the enactment of general acts for the annexation of territory. Another method of annexation, which is in effect forcible annexation, provides that the question shall be determined by the total vote in the city and the territory to be annexed, instead of requiring the separate approval of each. Under this plan the city to which the annexation is to be made is able, with its larger voting population, to force territory to be annexed. This was the method used to bring about the consolidation of Pittsburgh and Allegheny City in 1906. In some

¹² See report of the Chamber of Commerce of the United States, *Municipal Annexation of Land*; Committee on Metropolitan Government of the National Municipal League, *op. cit.*, chaps. v-ix; American Municipal Association, *Changes in Municipal Boundaries Through Annexation, Detachment and Consolidation* (Chicago, 1938).

cases the question of the annexation of unincorporated territory is given to an administrative body or the courts. In Ohio the question of whether unincorporated territory shall be added to a city is determined by the county commissioners. Some states provide that such questions shall be determined by the courts. In such cases, however, the statute will be attacked as an unconstitutional delegation of legislative power if the courts are given the power to determine whether such territory *ought* to be annexed. Rather, the statute must provide that the courts shall order such annexation if they find certain specified facts to exist. In this way the statute can be saved from attack on the ground that it is an unconstitutional delegation of legislative power to the courts. A study of the situation shows that cities are not annexing territory in keeping with the expansion of their population. The growth of suburbs has gone on at a much more rapid pace than has extension of the boundaries of the central city.

The chief opposition to annexation has come from the territory to be annexed rather than from the city to which the annexation is to be made. Suburbs, whether residential or industrial, are indicative of a desire to escape from and to avoid some of the disadvantages of the large city, and at the same time to secure the advantages. Why, they ask, should they vote to unite with the city from which they sought to escape? Even though the disadvantages to the region as a whole from the existence of many separate and independent governments may be pointed out, people consider the question of annexation from the limited point of view of their own section rather than from that of the whole area. They consider their own government to be more efficient than that of the city to which they are to be annexed, and they feel that it will mean a lowering in standards of service. Where their taxes are lower than those of the annexing city, they look with disfavor upon the step, believing that this added burden will be imposed to furnish services in the poorer sections of the annexing city. The people of a small suburb believe that as an independent municipality they can secure the services they desire because they are responsible for and can correct bad conditions in their government, but that if they are annexed and become part of a large city, they will no longer have control over their own destiny. Finally, local pride and community spirit are often too great to allow the people to vote voluntarily to end the independent existence of the

municipality in which they reside and to become a small part of a great city which is, they believe, controlled by political machines and bosses. Annexation must thus be considered a possible rather than a practicable method of meeting the problem of governmental integration in metropolitan communities.

One of the greatest obstacles to annexation has been the prospect that it would result in a higher tax rate in the territory to be annexed. To overcome this objection, a plan of differentials in taxation between urban and suburban and rural properties has been provided in a few cities. Property in the suburbs and the rural areas has been taxed at lower rates than that in the more compactly settled sections. This is usually done by providing that no property in newly annexed territory is to be taxed at the full rate until a specified density of population or building development has been attained. The purpose is to induce property owners in such sections to support annexation by removing one of their greatest objections to it. This principle has been applied in Baltimore, Philadelphia, Pittsburgh, and St. Louis. In the first two cities the principle is still in operation.

Taxing annexed suburban and rural territory at a lower rate is defended on the ground that the inhabitants will not receive full city services and therefore should not pay full city taxes. If they do pay the regular city tax rate, this means, it is said, that they are being taxed to support the annexing city. A suburban area which is not densely populated or well built up costs less to govern than does the highly developed city territory. The Committee on Metropolitan Government of the National Municipal League in its report in 1930 opposed such tax differentials. The argument that annexed territories will not receive full city services and should therefore have a lower tax rate

overlooks the fact that the costs of the improvements and services in these territories will generally be greater in proportion to each one hundred dollars of assessed valuation than in the city proper, because of the greater territory to be covered, the vast acres of vacant land representing a "dead run" in the operation and maintenance of the services, and the comparatively small amount of taxable property which will support them. Measured as a percentage charge on assessed valuations, it costs more proportionately to support one policeman per square mile in a suburban

or semi-rural section than it does to support four policemen per block in a congested district.

It was also pointed out that where certain territory is not receiving full city services and improvements this is taken into account by assessors in fixing valuations for taxing purposes. Such properties would be valued lower than those in a densely populated and highly improved section, so that under the full rate their tax burden, through the lower valuation, would be adjusted to the services received.

On the basis of the record thus far made, annexation is inadequate as a solution of the metropolitan problem. Politicians in suburban cities stand to lose their positions and their power; hence they may be counted upon to lead the opposition. They will appeal to the people not to surrender their city to the graft-ridden political machine of the central city. The people will be told that the only interest of the central city is to secure the added tax resources of the suburb, and that any over-all savings will benefit not the suburb but only the central city. In a campaign for the annexation of a suburb to the central city, appeals to local pride are more effective than a discussion of the economies which will result from the integration of governments in the metropolitan area.¹³

The urbanized but unincorporated rural territory also presents a problem in metropolitan areas.¹⁴ There has been a tendency for people to settle outside any incorporated municipality, either the central city or a suburb. The nearest city has in many cases extended water and sewage service into these areas and made fire calls. The question arises as to whether this policy has not encouraged these unincorporated areas to oppose annexation. Some cities are now refusing to make fire calls outside the city limits unless arrangements are made in advance for payment for this service. Cleveland now makes no fire calls outside the city unless a contract has been entered into for such service and payment made in advance. The charge is two mills per dollar on the total value of the taxable property of the applicant; this is approximately the cost of providing fire protec-

¹³ See Victor Jones, "Politics of Integration in Metropolitan Areas," 207 *Annals of the American Academy of Political and Social Science* 161 (Jan., 1940).

¹⁴ See chap. i for a further consideration of this question.

tion in the city. Other cities have gone further and refused to make fire calls in urbanized rural areas unless they become part of the city. In furnishing water and sewage service to outside areas, cities are tending to fix the rates sufficiently high to penalize property owners in adjoining unincorporated urban areas who use the service. The economic motive—lower taxes—which accounts in large part for the development of these areas thus disappears and the incentive for incorporation becomes greater.¹⁵

MUNICIPAL FEDERALISM

The application of the federal principle to the metropolitan region is another means of securing a greater degree of political integration. Under this plan, the municipalities in the metropolitan region would not be completely merged into a single government and thus cease to exist as separate entities. Rather they would continue to exist and exercise control within their boundaries over certain matters which are considered local in nature. Matters of general concern to the whole region would come under the control of the federated city, which would have jurisdiction throughout the territory. It would thus be an application to the metropolitan region of the federal principle as provided in the Constitution of the United States. The national government has been given control over questions which are of country-wide interest and upon which it is desirable to have a uniform policy. The states continue their existence as separate entities, with jurisdiction in matters of local interest and in those upon which it is unnecessary, if not undesirable, to have a uniform policy. If this principle is applied to a metropolitan community, the cities would become component parts of the federated city, with representation in a central legislative body and a vote on affairs of city-wide interest. The cities would each continue to have their own separate governments, with authority over local matters such as street cleaning and garbage and ash removal.

This system may be looked upon as a compromise between the present highly decentralized system with separate municipalities

¹⁵ During 1944 and 1945 approximately 140 cities of over 10,000 population annexed some unincorporated territory. See 25 *Pub. Management* 332, 338 (Nov., 1943); 28 *ibid.* 173 (June, 1946).

acting independently and without consideration of the rights of others, and a highly unified system which would result from carrying annexation to its logical conclusion. It is believed that cities can be induced to enter into a federated arrangement when they would oppose annexation. The maintenance of their separate existence and the reservation of control over local matters are concessions made to induce them to yield to a general government control over matters which should be treated as a unit throughout the whole region.

London and Berlin furnish the best examples of the application of the federal principle to a metropolitan community. The closest approximation to this principle in any metropolitan region in this country is seen in New York City. When the charter of Greater New York was adopted in 1898 it was felt that some concession to local sentiment must be made. The result was the borough system. There are no borough councils or legislative bodies, the central government having complete legislative authority. The powers of the boroughs are administrative rather than legislative. In each borough there is a president who is elected for a four-year term. Among his duties are the constructing and repairing of streets and sewers, the care of public buildings, and the enforcement of building regulations. Each borough has a school board but it is responsible only for minor matters. The borough presidents are also members of the Board of Estimate and Apportionment, which is, in a sense, the upper house of the city council. While New York City's borough plan represents an attempt to apply the federal principle to a metropolitan region, "centralization was carried so far and borough autonomy allowed so restricted a sphere as to make the scheme inconsistent with true principles of federalism."¹⁶ The principle of the federated region has been proposed in a few other cities but has been rejected in all cases. Such a plan was rejected in Alameda County, California, in 1922, in Pittsburgh in 1929, and in St. Louis in 1930.

The principle of a federated city is a compromise. As in the case of many compromises it has its defects. The chief of these is the duplication of governmental organization in the boroughs or constituent members of the federal city. But it can provide a distinct improvement over the situation now existing in most metropolitan

¹⁶ It should be noted, however, that recent proposals for further centralization have been made.

regions with the multiplicity of governments. Where expansion of the political boundaries of the central city fails, federalism offers another solution. Half a loaf is better than nothing.

One of the problems which arises when it is proposed to apply the federal principle to a metropolitan area is to determine what powers shall be conferred upon the metropolitan government and what functions shall be left under the control of the component units. It is necessary to decide what problems need common and unified treatment throughout the area, and to vest control over these in the metropolitan government. Rather than being a question of what powers should be vested in the central government, it is in many cases a question of what the component units are willing to have taken from them. Compromise of principles may be necessary in order to secure the support of the member units in the proposed federation. And if too many compromises are made and too much is conceded to local pride and sentiment, the result is a useless increase in the governmental machinery.¹⁷ Unless sufficient powers are conferred upon the metropolitan government, there will be federalism in form only and the plan will be of little value.

SPECIAL AUTHORITIES¹⁸

The special district has been resorted to in some cases to secure a unified policy in meeting the problems which arise in the metropolitan region. Such authorities are created to administer a particular service, usually one in which there is need of a single authority for the whole region. When problems arise in metropolitan regions which cannot be met by other methods, resort is made to the *ad hoc* district. When the problem of sewage disposal in the Chicago region became acute and it was obvious that the situation could not be met by separate and independent action of the municipalities in that area, an *ad hoc* authority, the Sanitary District of Chicago, was created. The district now covers an area of 442 square miles, over twice that of Chicago, and embraces 61 municipalities within its

¹⁷ T. H. Reed, *op. cit.*

¹⁸ Committee on Metropolitan Government of the National Municipal League, *op. cit.*, chaps. xiv-xvi; W. T. R. Fox and A. B. Fox, "Municipal Government and Special-Purpose Authorities," 207 *Annals of the American Academy of Political and Social Science* 176 (Jan., 1940).

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boundaries. Two hundred municipalities are included in the area under the jurisdiction of the Port of New York Authority; and the Massachusetts Metropolitan District includes about 40 municipalities in four counties. The Metropolitan Water District of Southern California was established to bring water some 300 miles from Boulder Dam to 13 southern California cities, including Los Angeles. Special districts for metropolitan districts have been created to maintain parks, carry on slum clearance and low-cost housing projects, maintain libraries, and construct bridges, levees, wharves, and other public works. The *ad hoc* authority thus offers a means of securing action in a metropolitan region by a single authority.

There are various motives or reasons for the creation of special districts.¹⁹ The one with which we are especially interested in the present discussion is the creation of a unit whose jurisdiction will cover the problem to be met. The political boundaries of the separately incorporated municipalities in a metropolitan area do not coincide with the social, economic, and political problems which arise. As a substitute for annexation or federalism, a special district is created, with jurisdiction over the entire metropolitan area, and is entrusted with the performance of a common function. The function, as pointed out above, may be disposing of wastes, providing a water supply, maintaining parks, planning, providing low-cost housing facilities, etc. Another argument advanced in favor of the creation of a special district is that it is a means of removing the function from politics. Independence of the regular government is considered to be a means of keeping the activity out of politics; separately incorporated school and library districts have often been justified on this basis. Another reason for the creation of special districts may be the desire to evade constitutional debt limits. The city or cities may have reached their debt limit, so a new government is created with debt-incurring power. In view of this purpose, one writer has referred to special districts as "borrowing machines."²⁰

There are several classes or types of special authorities which have been established. There are districts which have been organized as agents of the state government, with their personnel, activities,

¹⁹ See Victor Jones, "Politics of Integration in Metropolitan Areas." The discussion which follows is based largely on his study.

²⁰ H. A. Davis, "Borrowing Machines," 24 *Nat. Mun. Rev.* 328 (June, 1935).

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revenues, and expenditures subject to state control. The Massachusetts Metropolitan District Commission and the Port of New York Authority are of this type. The second type of authority is that set up as a distinct local corporation which functions independently of other local bodies. The Sanitary District of Chicago and the Seattle Port Commission are of this type. The third type of *ad hoc* authority is that organized to serve as the agent of a group of municipalities. Such authorities are set up by agreement among the municipalities, and the governing body is composed of their representatives. The Niagara Frontier Planning Board is of this type.

The special district is a form of integration of governments in metropolitan regions. While in most cases it has proved effective and valuable in performing a specific function, obviously the number of such authorities would become too great if a separate one were created for each activity for which there is need of a common authority. There has been little or no tendency to give additional functions to such authorities, once they have been created. The integration of one activity or function under an *ad hoc* authority has done little to bring about integration of other activities. The Sanitary District of Chicago has been in existence for over fifty years, but there is no tendency to extend the principle to other services. The value of a single authority for the whole metropolitan region, as demonstrated by the Sanitary District, has been of no effect in causing individual political units to work toward integration.

The problem of the coordination of governmental activities becomes more difficult if extensive use is made of the special district plan. The need of cooperation on the part of agencies engaged in similar types of work is obvious. This can be secured much better when these related activities are entrusted to departments of one government than when performed by independent special districts. There is the further problem of duplication of staff activities if separate special districts are created for many purposes. Shall each of these have its own civil service system, purchasing department, etc.? Attempts at cooperation by special districts serving the same area have not been too successful; each is convinced that its own program is the most significant and asks that modifications be made by others. If, however, all functions can be entrusted to one govern-

ment, the directing head of that unit can secure a degree of coordination that is not possible where use is made of several special districts for the performance of various functions. Finally, there has not always been coordination between the programs of the special districts and those of the regular municipal governments in the area. The special district has served a useful purpose in meeting particular problems. But such districts do not offer a solution to the problem of governing metropolitan regions. They are a temporary expedient rather than a permanent cure for the ills of such areas.

It should be pointed out that the use of special districts is not limited to metropolitan regions. They are often created for small twin cities, or for a city of medium size and its small suburbs. Sanitary districts for the disposal of the sewage of two or three such independent municipalities are often established. Special districts are sometimes limited to strictly rural territory, such as road districts and drainage districts. Such districts have been created when the problem presented did not conform to the existing governmental areas.²¹ In many states the use of the special district has become so extensive that there is some question whether this device, which originated as a remedy for an evil, has not, because of the abuse in its use, become an evil itself.²²

EXTRATERRITORIAL POWERS OF CITIES AS A MEANS OF INTEGRATION

Permitting the central city to exercise authority beyond its limits is another means of avoiding duplication of effort and conflict of authority in a metropolitan region. Baltimore has been given power

²¹ In some cases, however, the boundaries of the special district are coterminous with an existing political area, such as a city. The reason for the creation of the special district in such cases seems to be either a distrust of the regular governmental authorities and a desire to get the activity out of politics, or a desire to evade constitutional debt limitations.

²² See F. H. Guild, "Special Municipal Corporations," 18 *Nat. Mun. Rev.* 319 (May, 1929); Charles Kettleborough, "Special Municipal Corporations," 9 *Am. Pol. Sci. Rev.* 751 (Nov., 1915); F. H. Guild, "Special Municipal Corporations," 12 *ibid.* 678 (Nov., 1918), and in 14 *ibid.* 286 (May, 1920); W. M. Olson, "The Value of Sanitary Districts," 27 *Am. City* 557 (Dec., 1922); Charles Kettleborough, "Special Municipal Corporations," 8 *Am. Pol. Sci. Rev.* 614 (Nov., 1914); F. P. Gruenberg, "Incorporated Districts—Blessings or Drawbacks?" 28 *Am. City* 593 (June, 1923); H. A. Davis, *op. cit.*

to prevent the introduction of contagious or infectious diseases within three miles of the city on land or fifteen miles on water. Chicago has power to regulate noxious trades within one mile of the city. The governing authorities of all cities in Illinois may suppress houses of ill fame or assignation within three miles of the outer boundaries of the city. Cities in Indiana have been given jurisdiction for ten miles beyond their boundaries to protect watercourses and to keep the streams from becoming polluted, and they have jurisdiction for four miles beyond their borders to regulate the location of certain industries, to prevent the deposit of garbage and other waste material, to abate nuisances, to regulate the location of cemeteries, to establish quarantine regulations, and to preserve peace and good order and prevent vice and immorality. Laws have been passed in several other states giving cities jurisdiction beyond their boundaries.²³ This method seems, however, to have limited value as a means of securing the integration of local governments. The people of the central city are unwilling to have tax money spent outside the boundaries of their city, especially if the benefit is for the whole metropolitan area. Why, they ask, should they carry the burden alone when the people of other cities in the area benefit? And the people of the suburbs object to jurisdiction being exercised over them by the central city because they have no voice in determining the policies and the method of administration. They look upon this as undemocratic, and their opposition will prevent extensive use of the principle of giving extraterritorial jurisdiction to the central city.

In some cases one city performs services in another on a contractual basis. This might be looked upon as a type of extraterritorial jurisdiction, but since it is done with the consent of the other city it will be discussed in the following section on municipal cooperation.

Transfer to the county of some functions which are now performed by cities also offers a possible means of securing uniformity of action in a metropolitan community. A reallocation of functions

²³ H. B. Woolston, "Municipal Zones," 3 *Nat. Mun. Rev.* 465 (July, 1914); W. Anderson, "The Extraterritorial Powers of Cities," 10 *Minn. Law Rev.* 475, 564 (May, June, 1926); "Extraterritorial Powers of Cities," 41 *Harvard Law Rev.* 894 (May, 1928).

between the cities and the county would be depended upon, rather than a revision of the structure. This may be done by state law transferring to the county functions formerly performed by cities. And it may be secured by the voluntary action of the cities in transferring the function to the county and agreeing to pay a fee for the service rendered.

MUNICIPAL COOPERATION AS A MEANS OF INTEGRATING LOCAL GOVERNMENTS

Voluntary cooperation of the municipalities in a metropolitan area offers another means of solving the problem of integrating local governments.²⁴ Such cooperation may be quite informal in nature or it may be placed on a more formal basis. Individual departments of cities in metropolitan areas sometimes cooperate on an informal basis. Such cooperation is found more commonly on the part of fire, police, and health departments than any others. There has been extensive cooperation of the existing governmental bodies in the Cincinnati metropolitan area, much of it on an informal basis, as a means of unifying and integrating the work of the political subdivisions.²⁵ This has been especially true of the city of Cincinnati, the Cincinnati school district, and Hamilton County. Illustrative of this cooperation is the fact that the city solicitor acts as legal adviser for the school board, and the municipal civil service commission and the sinking fund commission also act for the school district. The county and city have joined in the employment of a welfare director. In regional planning the city and county cooperate. An attempt is made to coordinate the bond program of the local governments. The submission of bonds by the city, school district, and county is planned so that the charge on the taxpayers will be kept at a fairly even rate. Needs for the ensuing five years are considered and planned, immediate needs being given priority.

The formal intergovernmental contract has been referred to as

²⁴ See Committee on Metropolitan Government of the National Municipal League, *op. cit.*, chap. iv; A. J. Koenig, "Intergovernmental Cooperation," 18 *Pub. Management* 227 (Aug., 1936); N. L. Gill, "Intergovernmental Arrangements," *Municipal Year Book*, 1936, p. 140.

²⁵ S. Gale Lowrie, "Metropolitan Government in Cincinnati," 30 *Am. Pol. Sci. Rev.* 950 (Oct., 1936).

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"one of the newest and most promising approaches to the metropolitan problem."²⁶ Under this arrangement one jurisdiction may perform a given service for another. Thus the largest city might perform the function for all the cities in the metropolitan area; or the service might be provided by the county for all the cities in the area. Some contracts provide for the joint performance of a function on a cooperative basis. This arrangement is sometimes referred to as functional consolidation.

The principle of cooperation by joint action is illustrated by the purchasing of materials.²⁷ Several of the governments in a metropolitan area, realizing the advantage of quantity buying, may agree to cooperate in making their purchases. At the suggestion of the Bureau of Governmental Research, the purchasing agents of the city of Cincinnati, Hamilton County, and the Cincinnati Board of Education began the practice of making joint purchases of coal. Seeing the advantages of such a plan, the Cincinnati Public Library and the University of Cincinnati joined the other jurisdictions, and cooperative purchasing was extended to other materials. A Committee of Purchasing Agents of Hamilton County, representing the cooperating governmental units, has been formed. It has no legal status, being merely a voluntary cooperative venture. A similar plan of voluntary cooperation in making purchases has been used by the city of Milwaukee, the county, the School Board, the Board of Vocational Education, the Metropolitan Sewage Commission, and the Milwaukee Auditorium. Such plans for cooperative purchasing are found in other metropolitan areas.

Joint action by voluntary cooperation may be used in the construction of public works that are of benefit to more than one city. This type of cooperation is seen in the construction of Brooklyn Bridge by New York City and Brooklyn, and in the construction and maintenance of bridges between Boston and Cambridge in Massachusetts, and between Minneapolis and St. Paul in Minnesota. There are several cases where cities have cooperated in the construction and maintenance of sewers. Several cities in northern New

²⁶ R. M. Ketcham, *Intergovernmental Cooperation in the Los Angeles Area*, p. 3.

²⁷ Paul Beckett and Morris Plotkin, *Governmental Purchasing in the Los Angeles Metropolitan Area* (1941). This discussion is based on chap. xvi of that study.

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Jersey cooperate in maintaining a joint sewer outlet. Cleveland and Lakewood also cooperate in the problem of sewage disposal. Since 1922, Pasadena, South Pasadena, Alhambra, and San Marino have jointly maintained a sewage disposal and treatment plant, each city paying part of the cost of its operation and maintenance. A similar plan of joint sewage disposal has been in effect since 1926 in Pomona, La Verne, and Claremont, California.²⁸

In some cases the parent or core city in the metropolitan region furnishes certain services to other municipalities in the area and thus avoids duplication of plant or organization. In 1943, 23 of the largest cities in this country were supplying water to their neighbors. Although the sale of water is usually voluntary, in New York City and Chicago it is mandatory. Chicago sells water directly to 27 neighboring cities and indirectly to 11 others. These 11 buy from one of the 27 supplied directly.²⁹ Detroit, New York, and Portland (Ore.) each furnish water to more than 20 municipalities and townships. The Cleveland water plant serves a large majority of the municipalities in Cuyahoga County and a few in a neighboring county. About one-fourth of the revenue-producing water is sold outside the city of Cleveland. The water is sold to the city itself in the case of four large suburbs, which then resell it to the residents, but in most cases the city of Cleveland sells it directly to the consumers in the suburbs. The effectiveness of this method of securing integration for this one function in the Cleveland metropolitan area is shown by the fact that only two other water plants are operating in Cuyahoga County.³⁰ The sale of water by the central city to the suburbs offers a means of integrating the water supply in the metropolitan region.

Eighteen of the largest cities in the country were cooperating with other municipalities in the treatment or disposal of sewage in 1942. This is done by written contract permitting the smaller neighboring cities to make connections with their sewage systems.³¹ The city of

²⁸ F. M. Stewart and R. M. Ketcham, "Intergovernmental Contracts in California," 1 *Pub. Adm. Rev.* 242 (Spring, 1941).

²⁹ Emil F. Jarz, "Intermunicipal Cooperation in Water Supply," 25 *Pub. Management* 7 (Jan., 1943).

³⁰ Christian L. Larsen, "Cleveland—Potential City of a Million," 30 *Nat. Mun. Rev.* 335 (June, 1941).

³¹ Emil F. Jarz, "Intermunicipal Cooperation in Sewage Disposal," 24 *Pub. Management* 267 (Sept., 1942).

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Los Angeles is reported to have negotiated, since 1923, 41 contracts for taking the sewage discharge of other governmental units into its mains.³²

Intermunicipal cooperation between the central city and its suburbs has also been developed in police and fire protection. Twenty-three of the largest cities send police radio calls to police cars in suburbs.³³ A contract or informal agreement is entered into, and the service is generally rendered without cost; but in a few cities a charge is made. Under this arrangement, the police in the suburb telephone the dispatcher in the central city, who then broadcasts the message requested. Several of our large central cities render assistance to suburbs in case of fire.³⁴ In most cases this is done only in an emergency and is not on a contractual or formal agreement basis. Some cities, however, render outside assistance on a contractual basis only, and for an agreed charge. A few mutual-aid plans have been worked out for fire protection in metropolitan communities. Boston and 11 other cities in the metropolitan area have joined in a mutual aid arrangement.

Cooperative action to work out regional plans for metropolitan areas has been tried.³⁵ The difficulty of attacking planning on an urban rather than a regional basis is obvious. A transportation system must be provided for the region and not for each separate municipality. Arterial highways must be provided on a regional basis and not by the independent action of many cities. The Greater Cleveland Postwar Planning Commission has representatives from the city and county, and from suburban communities. The Citizens Regional Planning Council of Greater Kansas City covers the whole metropolitan area. Other metropolitan communities have recognized the need for cooperation in this field of activity.

The county may also be used, rather than the central city, to render services to the various governmental units in a metropolitan

³² F. M. Stewart and R. M. Ketcham, *op. cit.*

³³ Emil F. Jarz, "Intermunicipal Cooperation in Police Protection," 24 *Pub. Management* 68 (Mar., 1942).

³⁴ Emil F. Jarz, "Intermunicipal Cooperation in Fire-Fighting," 24 *Pub. Management* 46 (Feb., 1942).

³⁵ Christian L. Larsen, "Cleveland Plans on Area Basis," 34 *Nat. Mun. Rev.* 223 (May, 1945); William M. Symon, "The Disappearing Boundaries," 35 *ibid.* 224 (May, 1946); Paul Oppermann, "Cooperative Planning by Small Cities," 24 *Pub. Management* 237 (Aug., 1942).

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area on a contractual basis.³⁶ In the Los Angeles metropolitan area, the County Civil Service Commission was reported in 1941 to have signed contracts with 10 cities as well as with some special districts. Fees were paid to the county for examinations and personnel services rendered under these contracts. "County contracts are standard in form with prescribed fees for work on classification systems, compensation plans, rules and regulations, conduct of hearings, preparation and conduct of examinations, and general administration." Forty of the 45 cities in Los Angeles County had by 1946 turned over to the county the assessment and collection of taxes, a fee being paid for this service. The annual fee paid by the city of Los Angeles for this service is \$22,350. It has been estimated that the city could not duplicate this service for less than \$700,000; this indicates the advantages of this arrangement.³⁷ Forty of the 45 cities in Los Angeles County contract with the county for the performance of health services. Twenty of the 45 cities have contracts under which the county librarian administers their libraries. Contracts are used in other fields, but these illustrate the present use of this device in the Los Angeles area and its possible use in other metropolitan areas.³⁸

Despite what has been accomplished in Cincinnati, Los Angeles, and other areas, voluntary cooperation, especially of an informal nature, does not solve the problem presented by a great number of separate governments in a metropolitan region. "Cooperation," says the Committee on Metropolitan Government of the National Municipal League, "has helped, here and there, in some metropolitan areas to meet particular situations, or to promote comprehensive arrangements for solving metropolitan problems. But it has not succeeded in unifying the government of a metropolitan area sufficiently to make possible the comprehensive and effective solving of the metropolitan problems. It does not afford an adequate answer to the problem of metropolitan integration." Professor Lowrie, after listing the various types of cooperation in the Cincinnati

³⁶ F. M. Stewart and R. M. Ketcham, *op. cit.*; R. M. Ketcham, *op. cit.*

³⁷ John McDiarmid, "Los Angeles Attacks Metropolitan Problem," 29 *Nat. Mun. Rev.* 459 (July, 1940).

³⁸ In 1946, 200 contracts and agreements had been entered into between governing bodies for services in ten major functions. Judith Norvell Jamison, "Neighboring Areas Join Hands," 35 *Nat. Mun. Rev.* 111 (Mar., 1946).

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region, said: "While much has been done by voluntary action, it is obvious that only a government structure extending over the whole range of the problems can act effectively."³⁹ Herbert A. Simon has referred to intergovernmental arrangements as stopgaps and as the most inadequate of the various proposals for solving the problem of metropolitan organization.⁴⁰ Voluntary cooperation of the governmental units in a metropolitan area is helpful and should be commended but it does not satisfactorily meet the needs of the metropolitan area problem.

CITY-COUNTY RELATIONS

The discussion thus far has been primarily concerned with the relationship of cities to one another, with special reference to metropolitan regions. There is the further question of the relation of cities to other units of government, especially the county.⁴¹ Where, in our larger cities, city and county governments operate over the same area, there is duplication of functions resulting in unnecessary governmental expenditures and opening the way to conflict of authority in the exercise of powers. In such cases cities are paying a large part of the county taxes and not receiving an equivalent in services, since many of the county activities or functions are performed chiefly in the rural areas.⁴² If one city has 80 per cent of the population and assessed valuation of the county, why should the people living in that city support both a county and a city government? It seems unfair to ask the people in the large city to support

³⁹ S. Gale Lowrie, *op. cit.*

⁴⁰ Herbert A. Simon, "Planning for Organization and Management," 27 *Pub. Management* 108 (Apr., 1945).

⁴¹ See J. A. Fairlie and C. M. Kneier, *County Government and Administration*, chap. xxiv; *Ill. Const. Conv. Bulletins*, No. 10; Committee on Metropolitan Government of the National Municipal League, *op. cit.*, chaps. x-xiii; C. E. Merriam, S. D. Parratt, and A. Lepawsky, *op. cit.*, chap. xxv; *Proposals for the Reorganization of Local Government in Illinois*, Part II—The Chicago-Cook County Metropolitan Area; C. C. Maxey, "The Political Integration of Metropolitan Communities," 11 *Nat. Mun. Rev.* 229 (Aug., 1922); A. C. Avery, "Consolidation of County and City Governments," 9 *North Carolina Law Review* 479 (June, 1931); S. G. Lowrie, "Governing Our Metropolitan Areas," 5 *Univ. of Cincinnati Law Rev.* 186 (Mar., 1931).

⁴² See Commission to Investigate County and Municipal Taxation and Expenditures, *op. cit.*, pp. 218-224.

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their own city superintendent of schools, police department, and street department, and then to pay most of the cost for duplicate county officers (county superintendent of schools, sheriff, highway department) who function within the large city only to a limited extent if at all. Or if it is a responsibility that the central city should bear, and its share is 80 per cent since it has that percentage of the assessed valuation of property in the county, it seems unwise and inefficient for the function to be performed by two sets of officers. In a few metropolitan areas only has action been taken to meet this problem.

Two methods of improving the relationship between cities and counties have been tried. They are city-county consolidation and city-county separation. Under the former plan the territory of the county which lies outside the city is joined to the city, the boundaries of the two are made coterminous, and the governments are consolidated, to some degree at least. The consolidation act passed in Philadelphia in 1854 illustrates this type of governmental simplification. By this act the limits of the city of Philadelphia were extended so as to make them coterminous with the county of Philadelphia. The units of local government within the county were consolidated with the city government. These included nine incorporated districts, six boroughs, and 13 townships. The degree to which city and county governments have been consolidated is, however, limited, and the two units remain largely independent. The county commissioners, treasurer, and auditors have been discontinued and their functions transferred to city authorities. But the judges, register of wills, recorder of deeds, clerk of quarter sessions, district attorney, and coroner have been retained as elective county officers. The maintenance of separate and independent governments for the city and county has proved to be the chief weakness of city-county consolidation in Philadelphia. The defect lies not in the principle but in the failure to apply it vigorously. New Orleans furnishes another illustration of the principle of city-county consolidation, in this case it being the parish that is consolidated with the city.⁴³

City-county separation involves the withdrawal of the city from the county. The city then exercises within its limits both city and

⁴³ S. S. Sheppard and L. L. Moak, "New Orleans Leads in Consolidation," 29 *Nat. Mun. Rev.* 724 (Nov., 1940).

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county functions, the county government having jurisdiction over only that part of the territory not included within the city. Baltimore city was separated from Baltimore County in 1851. The city has been given the legal status of a county by the state constitution, though it is not so named. The city government performs the functions of both a city and a county. In 1876 St. Louis was separated from the county in which it was located. Certain county officers were abolished, among them being the county court of seven members, which corresponded to the county board in other states. The city government now performs the functions of both city and county. One of the difficulties of such a plan is the expansion of the city beyond the county boundaries. This situation now exists in St. Louis. San Francisco and Denver also make use of the principle of city-county separation.

Although there are these isolated cases of city-county separation, Virginia is the only state that makes systematic use of the principle on a state-wide basis. In that state all cities having a population of 10,000 or over are removed from the jurisdiction of the county, their officers performing within their boundaries duties assigned to county officers. There are now 24 cities which are politically independent of the counties in which they are situated. A recent report on the operation of city-county separation in that state concludes that it has "proved to be a wise political policy." The advantages are summarized as follows: It eliminates "duplicated offices, services, and equipment, and completely avoids overlapping of political authority. . . . It has placed responsibility for the efficient administration of Virginia city government squarely on the city officials who cannot allege county official interference in municipal affairs or costs."⁴⁴

The adoption of the principle of city-county separation in other states would in many cases call for a reorganization or realignment of county boundaries. Separation of cities from counties will mean a great reduction in the assessed valuation, and thus the revenues, of the county. While there will be some reduction in county governmental costs, it will not be commensurate with the loss of revenues. A loss of 50 per cent in assessed values and revenues as a result of city-county separation may not reduce county operating costs by

⁴⁴ R. B. Pinchbeck, "City-County Separation in Virginia," 29 *Nat. Mun. Rev.* 467 (July, 1940).

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more than 25 per cent. City-county separation will mean in many cases that the rural territory remaining is not sufficient to support a county government without placing an unreasonable tax burden on the people. The answer would appear to be the consolidation of counties, or in this case the rural parts of counties, so as to provide a rural unit sufficiently large in area, population, and assessed valuation to justify the maintenance of a county government. The consolidation of counties has been urged by many men in public life; so if this is one of the results of city-county separation, it can be looked upon as an advantage rather than a disadvantage.

England has made far greater progress in city- or borough-county relations than has the United States. The local government act of 1888 provided for county boroughs. The Ministry of Health might, after inquiry, make any municipal borough with a population of 50,000 or more a county borough. The borough council now performs, within the boundaries of the borough, functions which were formerly carried out by the county council. Since 1923 new county boroughs can be established only by private act.⁴⁵

The final question which arises concerns the results in those cases where city-county consolidation or separation has been tried. It appears that "economies, efficiency, simplification, and responsiveness of government" have resulted from the simplification of city-county relations.⁴⁶ The City-County Committee of the American Political Science Association, in its report of 1913, recommended that a "standard be adopted for each of our states whereby a city, upon attaining a given population, dependent upon the needs of each of the states, shall automatically become a county-city with powers of both a municipality and a county, with coterminous boundaries, a single legislative body, and a centralized executive." Recent studies of the results of city-county consolidation and separation indicate that economies do result. Writing of the situation in Denver, Mayo Fesler has said: "The advantages [of city-county unification] are apparent in the city of Denver in many ways: in the organization of the government for administration purposes, the generally high

⁴⁵ W. B. Munro, *Government of European Cities*, pp. 24-25.

⁴⁶ G. C. Sikes, "The Advantages of City and County Consolidation," 21 *Am. City* 260 (Sept., 1919); L. H. Joachim, "Dollars Speak in City and County Consolidation," 23 *ibid.* 639 (Dec., 1920); 24 *ibid.* 67 (Jan., 1920).

quality of her administration, the relatively low cost of her city-county government, the ease with which the voters can have a full understanding of their government and the settled satisfaction of her people with the economical and efficient administration of local affairs in the city-county." He concludes that city-county unification in Denver is so satisfactory that it is "the ideal toward which the people of a metropolitan community should ultimately aim."⁴⁷ Alfred F. Smith of the San Francisco Bureau of Governmental Research reports that the consolidation of city and county governments in San Francisco immediately resulted in a reduction in the costs of government which exceeded the fondest hopes of its sponsors. Since its adoption in 1856, he says that the plan has been a long-term investment in good government and that the resulting savings, "capitalized over the eighty-four years that have elapsed, would prove to be too fantastic for acceptance."⁴⁸

CONCLUSION

One approach to the reduction in local government costs is the curtailment of services—having the government do less things for us. In considering this question in an earlier chapter, we suggested that a more satisfactory approach to the question of reducing governmental costs would be through economies in operation and administration. Metropolitan areas furnish an excellent illustration of this principle. Curtailing police, fire, health, recreation, park, or other services in such areas, in order to reduce tax burdens, is unnecessary and unwise until reduction through efficiency and economy in methods of performance has been tried. And as long as we continue to perform functions through a multiplicity of governments, with the resulting duplication and conflict in the provision of services, it is obvious that we have not made use of economics in governmental organization as a means of reducing costs.

The situation in metropolitan areas has shown little improvement; in fact, it has grown worse. In considering this question,

⁴⁷ Mayo Fesler, "Denver Consolidation—A Shining Light," 29 *Nat. Mun. Rev.* 380 (June, 1940).

⁴⁸ Alfred F. Smith, "San Francisco: Consolidation Pioneer," 30 *Nat. Mun. Rev.* 152 (Mar., 1941).

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Thomas H. Reed has suggested that sheer necessity may bring about the needed changes.⁴⁹ The crisis in finances in the central cities has aroused some persons in positions of governmental responsibility not only to the desirability but to the necessity for action. Real estate interests have awakened to the disastrous effects on their investments in property in the parent city that result from urban decentralization. As long as the metropolitan area problem was one which interested only the reformers, little action was taken. As it gets progressively worse and the politicians and powerful economic interests see the necessity of action, changes may be expected.⁵⁰

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The Municipal Electorate

The composition of the electorate is especially important in the United States. It has been estimated that there are approximately 700,000 to 800,000 elective officers in this country. Of these, 66,000 are city officers.¹ In many cases the voter is also supposed to keep close supervision over these officers through the use of the recall. Now through the use of the initiative and referendum he is asked to take part in the actual process of legislation—both state and municipal.

Two general theories have been developed as to the nature of the electoral franchise. It has been looked upon as a natural and inherent right of every adult citizen, belonging to him by virtue of his membership in the state. This view has been largely discredited by the generally accepted view that the suffrage is a function conferred upon the individual for the benefit of the body politic. Thus suffrage is a privilege conferred upon the voter because it is believed that the interests of the state and the city will be furthered. The question to be decided in determining the composition of the municipal electorate is whether the persons enfranchised will discharge the function in such a manner as to lead to a more successful administration of public affairs. Changes in the composition of the municipal electorate should be determined by considerations of expediency rather than on the basis of the theory that any class has a right to vote. Suffrage is thus a privilege rather than a right. Those to whom the privilege has been extended, however, have a legal right to vote.

¹ The list is as follows: federal officers, 533; state officers, 10,000; county officers, 54,000; city officers, 66,000; miscellaneous, town, rural, and school officers, 750,000. C. E. Merriam and H. F. Gosnell, *The American Party System*, p. 273.

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It is not an inherent or natural right, but a right based upon law.²

The primary consideration in determining the composition of the municipal electorate should be what will secure a better-governed city, rather than what will be pleasing or fair to the individual voter. The principle stated by Elihu Root that "voting is not a natural right, but simply a means of government" is fundamental in a consideration of this question.³ "Suffrage," says Judge Cooley, "cannot be the natural right of the individual because it does not exist for the benefit of the individual but for the benefit of the state itself."⁴

The composition of the electorate, or the voting population, has, under our constitutional system, been left to the states. The framers of the Constitution of 1787 left the question of the suffrage to the states, merely providing that electors of members of the House of Representatives should have the qualifications requisite for electors of the most numerous branch of the state legislature. This power of the states has since been restricted by the Fourteenth, Fifteenth, and Nineteenth Amendments. States are thus free to determine the composition of the electorate as long as they do not deny persons the right to vote because of race, color, or previous condition of servitude or because of sex.

In most states the qualifications for voting in state and municipal elections are the same. All persons qualified to vote by the state constitution are eligible to vote in all elections—state and local. Different qualifications, however, have been used in some cases for municipal elections. The view taken by the courts is that the legislature, in the absence of constitutional restrictions, may prescribe different qualifications for electors in municipal elections. The problem in each case is to decide whether the constitutional provisions apply to municipal as well as to state elections. The legislature of Illinois by act of 1913 permitted women to vote in city and school elections.⁵ In a case before the supreme court of the state in 1914

² On the nature of the suffrage, see H. R. Bruce, *American Parties and Politics*, 3rd. ed., p. 452; R. C. Brooks, *Political Parties and Electoral Problems*, 3rd ed., p. 389; James W. Garner, *Political Science and Government*, chap. xix; W. J. Shepard, "The Theory of the Nature of the Suffrage," 7 *Proc. Am. Pol. Sci. Assoc.* 106 (1913).

³ Quoted in E. M. Sait, *American Parties and Elections*, 2nd ed., p. 23.

⁴ *Ibid.*

⁵ They could also vote for certain state offices created by statute.

it was held that different electoral qualifications could be set up for offices created by statute than for those created by constitutional provision. The constitutional provisions stating the qualifications of voters were held to apply only to constitutional offices, that is, those provided for by the constitution. The provision of the act permitting women to vote on "all questions or propositions submitted to a vote of the electors of such municipality or other political divisions of the state" was upheld, insofar as it applied to propositions provided for by statute; it was unconstitutional as applied to referendum elections provided for in the constitution.⁶

The courts are not in agreement as to whether a constitutional provision conferring the right to vote generally at all elections includes municipal elections. In a case decided in 1893, the Supreme Court of Florida held that a constitutional provision conferring the right to vote at "all elections under this Constitution" did not apply to municipal elections.⁷ The following year, however, the Supreme Court of Minnesota took the view that a constitutional provision as to voting for "any office which now is, or hereafter shall be, elective by the people" applied to both constitutional and statutory offices and to both state and municipal elections.⁸

In a case before the Supreme Court of Ohio in 1917 it was held that, even though women were without the right to vote generally in that state, it was within the power of a home-rule city to confer the right of suffrage upon them for municipal purposes. But the court stated that a city could not confer upon women the right to vote for candidates for, or to exercise any of the functions of, an office created by the constitution or by the general assembly.⁹

In the Ohio and Illinois cases discussed above, the municipal suffrage was broadened to include electors not included in the state electorate generally. The municipal suffrage has in some cases been limited more than that of the state. Nevada provided that only tax-

⁶ *Scown v. Czarniecki*, 264 Ill. 305, 106 N.E. 276 (1914); *Alberts v. Town of Danforth*, 281 Ill. 521, 118 N.E. 33 (1917). Also see *Wheeler v. Brady*, 15 Kan. 30 (1875); *Booten v. Pison*, 77 W. Va. 412, 89 S.E. 985 (1915).

⁷ *State ex rel. Attorney General v. Dillon*, 32 Fla. 545 (1893).

⁸ *State ex rel. Childs v. Holman*, 58 Minn. 219, 59 N.W. 1006 (1894). Also see note in 55 *Am. City* 115 (Nov., 1940), on "Legal Restrictions on the Right to Vote."

⁹ *State v. French*, 96 Ohio St. 172, 117 N.E. 173 (1917).

payers might vote upon the question of issuing city bonds to purchase a waterworks. This was attacked by a legal voter of the state who was not a taxpayer. He pointed out that the constitution of the state provided that all persons having certain prescribed qualifications "shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election." The act was upheld by the state supreme court on the ground that a legal voter may vote for officers and on questions of a "governmental nature," but that the constitutional provision did not apply to questions involving the private or proprietary functions of cities. Providing a water supply was held to be a private or proprietary function for which voting qualifications more limited than those enumerated in the state constitution might be required.¹⁰

The same view was taken by the Supreme Court of Colorado in an earlier decision. Though the state constitution granted the suffrage in "all elections" to persons having certain enumerated qualifications, the court upheld a statute providing that annexation of a town or city be submitted to the determination of such qualified electors of the city as had in the preceding year paid a property tax. The word elections as used in the constitution was held not to include all acts of voting, choice, or selection, without limitation, but to be used in a more restricted political sense, such as elections of public officers.¹¹

A different view of the municipal suffrage has been taken in Oregon. A home-rule grant which provided that "the legal voters of every city and town are hereby granted power to enact and amend their municipal charters" has been held to render void a provision of a city charter providing that only taxpayers may vote on matters relating to taxation. The tax involved in the case was provided for by a charter amendment.¹² It has also been held in that state that such suffrage limitation may not be accomplished by a state law. An act of 1929 provided that only taxpayers shall be allowed to vote at any election held within any incorporated city or town on

¹⁰ *Carville v. McBride*, 45 Nev. 305, 202 Pac. 802 (1922).

¹¹ *Mayor v. Shattuck*, 19 Colo. 104, 34 Pac. 947 (1893). Also see *In re Walker River Irrigation Dist.*, 44 Nev. 321, 195 Pac. 327 (1921).

¹² *Johnson v. City of Pendleton*, 131 Ore. 46, 280 Pac. 873 (1929); *Veatch v. Cottage Grove*, 133 Ore. 144, 289 Pac. 494 (1930).

the question of levying a special tax or issuing bonds. The word "elections" as used in the state constitution was held to apply to such questions, and that to limit the suffrage to taxpayers in such cases was contrary to the constitutional provision defining the persons qualified to vote in elections.¹³

The constitutions of some states establish or authorize qualifications for local suffrage different from those required in state elections. The legislature of Virginia may by special act establish for voters in any county, city, or town, a property qualification not exceeding \$250; and in Mississippi the legislature has the broad power to prescribe for municipal voters qualifications in addition to those required for voting in other elections. Rhode Island until 1928 had a property qualification for voting for members of the city council and the adoption of local financial measures.

The general rule and the practice in most states, however, is that the qualifications for voting in state and municipal elections are the same.¹⁴ A person who qualifies as a voter under the state constitution is permitted to participate in all elections, both state and local. These general constitutional provisions will now be considered.

AGE

The age required for voting is 21 in all states except Georgia, where it was reduced to 18 in 1943. Twenty-one is recognized in English and American law as the age at which a person becomes an adult of full legal competency. The suffrage laws in all our states except Georgia have adopted this common-law age at which the period of infancy ends as the proper one for beginning the exercise of suffrage.

RESIDENCE

All states require a definite period of residence within the state, the county or city, and the voting precinct before one can become

¹³ *Loe v. Britting*, 132 Ore. 572, 287 Pac. 74 (1930).

¹⁴ In England there was, until 1945, one set of qualifications for parliamentary voters and another for municipal voters. For the qualifications formerly required for voting in local government elections in England, see John J. Clarke, *The Local Government of the United Kingdom*, chap v; G. Montagu Harris, *Local Government in Many Lands*, p. 236. For the present law, see Norman Chester, "Britain Broadens Franchise," 35 *Nat. Mun. Rev.* 593 (Dec., 1946).

a qualified voter. Such a provision is designed to prevent the colonization of voters in doubtful cities or districts, and also to insure the voter an opportunity for acquaintance with local conditions. In the early history of the country when property ownership was a common qualification for voting, the residence requirement was unimportant, and in fact not required. With the abolition of the property test and the extension of the suffrage, such a requirement became necessary.

A question has arisen as to the meaning of the term "residence" in connection with voting. Legal residence for voting purposes does not always coincide with actual habitation. This is illustrated by the problem of students in attendance at colleges and universities. The Supreme Court of Illinois has held that "the mere presence of the student at the place of the college is not sufficient to entitle him to vote." According to the court, the question of residence is largely one of intention, but testimony of the student on this point is not conclusive. To entitle him to vote, "His residence must be *bona fide* with no intention of returning to the parental home. College students entirely free from parental control, who regard the college town as their home and who have no other home to return to in case of sickness or other affliction, are legal voters." "Residence" was held to be synonymous with "permanent abode."¹⁵

The period during which the voter must have resided in the state varies from three months in Maine to two years in Rhode Island and in five southern states. In 32 states the required period is one year. The required local residence in the county or city and in the precinct or ward varies. Ninety days' residence in the county or city and 30 days' residence in the ward or precinct are generally required.¹⁶

CITIZENSHIP

Citizenship is now a qualification for voting in all states. In the period following 1850, several states permitted voting by aliens who had formally declared their intention to become citizens of the

¹⁵ *Anderson v. Pifer*, 315 Ill. 164, 146 N.E. 171 (1925). Also see *Chomlau v. Roth*, 230 Mo. App. 709, 72 S.W. (2d) 997 (1934).

¹⁶ On residence requirements for voting, see R. C. Brooks, *op. cit.*, p. 412.

United States.¹⁷ This may be accounted for by the competition of the states to get the new German, Scandinavian, and British settlers.¹⁸ At one time 17 states permitted aliens who had taken out their first papers to vote; the practice was still continued by nine states in 1914. With the change in character of the new immigrants in the twentieth century and the impetus of the First World War, such provisions have been abandoned by all the states. Arkansas, the last state to allow alien declarants to vote, abandoned the plan in 1926.¹⁹

LITERACY TESTS

Connecticut by constitutional amendment in 1855 provided that "every person shall be able to read any section of the constitution or any section of the statutes of this state before being admitted as an elector." Massachusetts by constitutional amendment in 1857 provided that "no person shall have the right to vote, or be eligible to office under the Constitution of this Commonwealth, who shall not be able to read the Constitution in the English language, and write his name." The ability to read, or the ability to read and write, is now required in about 20 states. Several of these states are in the South where the literacy test appears in some cases as either an alternative or an additional test.

Literacy tests honestly applied and enforced should prove to be desirable qualifications for voting. A person who cannot read is not qualified to vote intelligently. With a ballot of printed names, and especially where measures are submitted under the initiative and referendum, we cannot hope to get an intelligent vote from illiterate persons.

The chief weakness of literacy tests for voters has been their incompetent, dishonest, and partisan enforcement. Election judges

¹⁷ Some states gave aliens the right to vote before 1850, but the movement gained its greatest impetus in the period following that date. The Illinois constitution of 1818 gave all white male inhabitants above the age of 21 years, who had resided in the state six months, the right to vote in all elections.

¹⁸ K. H. Porter, *A History of Suffrage in the United States*, pp. 119-122; William Anderson, *American City Government*, p. 173.

¹⁹ Leon E. Aylsworth, "The Passing of Alien Suffrage," 25 *Am. Pol. Sci. Rev.* 114 (Feb., 1931).

and clerks, having no objective test to determine whether a prospective voter can read or can interpret the Constitution satisfactorily, have used the literacy test for partisan political purposes. This has been especially true in the South where literacy tests have been used to disfranchise the Negro.²⁰ Election officials may enforce such constitutional requirements strictly (and unreasonably so, if necessary) in the case of the Negro and leniently (and unreasonably so, where necessary) in the case of the white voter. Leaving to these officials the decision as to whether a voter has given a reasonable interpretation of a constitutional provision obviously opens the door to favoritism.

The New York act of 1923 offers interesting suggestions for a method of securing honest and impartial enforcement of a literacy test for voters. This law places the administration of the literacy test in the hands of the school authorities, who certify the results to the registration officials. A new voter in that state must present to the election inspectors, as evidence of his literacy, either a certificate of graduation from the eighth grade of an elementary school in which English is the language of instruction, or a certificate attesting to his literacy issued by the state board of regents.

The board of regents has adopted rules for applying the test to determine literacy. The board makes use of the local superintendent of schools for this work. The regents determine the nature of the examination, which is held on designated days before each registration, either in school buildings or at places designated by the local superintendent of schools. Though the tests are simple, from one-fifth to one-tenth of the applicants fail to pass. The New York law seems to offer the most satisfactory means of securing an unbiased and competent application of a literacy test.²¹

The New York constitutional amendment of 1921 requiring voters to be able to read and write English authorized the legislature to pass "suitable laws" to enforce the provision. The legislative act making it the duty of the school authorities to determine the ability

²⁰ See, for example, William Pickens, "The Woman Voter Hits the Colored Line," 111 *Nation* 372 (Oct. 6, 1920).

²¹ On the New York literacy test for voters, see F. G. Crawford, "The New York Literacy Test," 17 *Am. Pol. Sci. Rev.* 260 (May, 1923); 19 *ibid.* 788 (Nov., 1925); F. G. Crawford, "Operation of Literacy Test for Voters in New York," 25 *ibid.* 342 (May, 1931); H. R. Bruce, *op. cit.*, pp. 465-466.

to read and write English was attacked as an improper delegation of legislative power. The Court of Appeals pointed out that it was impossible for the legislature to administer the tests to the voters and that it was necessary to delegate the power. Its delegation to the educational authorities of the state was upheld, there being no interference with the constitutional power of officers charged with the registration of voters to determine their qualifications.²² Except where a specific provision of the constitution prohibits such action, this decision would support the use of school authorities in other states to enforce and apply literacy tests for voters.

It appears, however, that the New York law has not been enforced without an effort on the part of political machines to control the examination. Speaking of the conduct of these examinations, one writer says:

Teachers, not familiar with the ways of politicians, were abused, threatened, insulted and assaulted for failure to "pass" applicants. Complaining witnesses were intimidated and, except for the usual futile investigation, no one was punished. In one instance in Brooklyn a summons was obtained after the police officer, who had been assigned to protect the teacher and who witnessed the assault, said: "I saw and heard nothing. How do you expect me to arrest the local district leader?"²³

There is little or no evidence that literacy tests have brought marked results, or that the foreign-born and illiterate native-born in states having literacy tests are attending night schools in order to qualify for voting. Neither is there any evidence that the vote is more intelligent in states with tests than in those without them.²⁴ In connection with this latter point it may be, as James Bryce said, that the real question "is not whether illiteracy disqualifies, but to what extent literacy qualifies."²⁵

²² *People v. Voorhis*, 236 N.Y. 437, 141 N.E. 907 (1923).

²³ E. H. Lavine, "*Gimme*," or *How Politicians Get Rich*, Vanguard Press, Inc., New York, 1931, p. 73.

²⁴ William Anderson, *op. cit.*, p. 176.

²⁵ James Bryce, *Modern Democracies*, vol. 1, chap. viii.

PROPERTY AND TAXPAYING QUALIFICATIONS

Property qualifications for voting were found in all the colonies.²⁶ This suffrage qualification was gradually abandoned during the first half of the nineteenth century. It remains as an alternative to the literacy test in some southern states, as in Alabama and South Carolina, where a person either must be able to read and write or must show that he owns and has paid taxes on property assessed at \$300. In Georgia the literacy test is waived for those who own \$500 worth of taxable property. The assessment or payment of a poll tax as a qualification for voting is still found in a few states. In some states the ownership of property is a necessary prerequisite to voting on bond issues. Formerly Rhode Island had a property qualification for voting for members of the city council and on financial questions. The payment of taxes upon property valued at \$134 or more was required. This was abolished by constitutional amendment in 1928.

The number of persons who are disqualified for voting by a real property taxpaying requirement is high. In the Providence, Rhode Island, election of 1924, out of a total of 85,966 votes cast, only 20,733 people voted as real property owners having real estate in the city with a value of at least \$134. There were 11,068 voters who had in the preceding year paid taxes on personal property valued at not less than \$134.²⁷ A longer residence requirement was provided for these personal property voters, as well as a provision for registration. In some sections of large cities, a property taxpaying qualification would disfranchise a large percentage of the voters.²⁸

The argument used by those who advocate a property qualification for voting is that it would put the suffrage in the hands of a more intelligent and thinking class of persons. Campaigns, it is said, would not be given over to ballyhoo and personalities to the extent they are at the present time; candidates would talk on the issues involved if they were appealing to the property owners who contribute directly to the support of the government. Advocates of such

²⁶ On this question, see K. H. Porter, *op. cit.*, chaps. ii-iv.

²⁷ A. C. Hanford, *Problems in Municipal Government*, pp. 44-45.

²⁸ Peter H. Odegard and E. Allen Helms, *American Politics*, p. 369.

a qualification do not deny that all individuals pay taxes. This burden is not limited to the man who owns property and who goes to the city or county treasurer's office to pay his taxes. The apartment dweller pays taxes—indirectly—through the owner of the building. The person who purchases food and who attends the theater pays taxes. Advocates of a property qualification for voting believe, however, that the direct payment of taxes brings a greater realization of the significance of an efficient and economical administration of public affairs. Such taxpayers will consequently vote on candidates and measures with more thoughtful consideration than do those who pay no direct taxes. "Campaign talk about the extravagance of government," says Charles Evans Hughes, "has, in large communities, a very limited effect, because people generally fail to appreciate that they are paying the bills, and that the real taxpayer is not necessarily the land-owner or the one who makes return to the assessor."²⁹ In discussing the former power of Tammany Hall, Joseph McGoldrick said: "For more than a decade the electorate of the city has been almost mockingly indifferent to extravagance and waste. This is not surprising in view of the fact that in many Manhattan districts there are but two or three taxpayers among five hundred voters. The situation is less extreme in Brooklyn and Queens, but even there less than one voter in ten pays direct taxes. . . . There can be no question that this condition breeds a feeling of political irresponsibility, and this is one of the things that makes for bossism everywhere."³⁰

An effort has been made in England to make voters appreciate that they are interested in efficient and economic municipal government by levying "rates" or local taxes on the occupant rather than on the owner. Taxes are assessed on the rental value of the premises rather than on the sale value. According to William B. Munro:

The practice of assessing the rates to the occupier has a beneficial effect upon the community morale. It brings home to every non-owning occupier, in a way that he cannot fail to appreciate, the fact that he and

²⁹ Charles Evans Hughes, *Conditions of Progress in Democratic Government*, pp. 39-40. See also Andrew D. White, "The Government of American Cities," *10 Forum* 358 (Dec., 1890).

³⁰ J. D. McGoldrick, "The New Tammany," *15 American Mercury* 11 (Sept., 1928).

not the landlord is the one who pays the taxes. In American cities it is the tenant who really pays the taxes, although he seldom realizes it. He thinks that the taxes come out of the landlord's pockets, and that is why he chuckles when the tax rate goes up. He would look at the matter of increased taxes somewhat differently if he appreciated the fact that the landlord is only a middleman who passes the increase to the tenants. In England there is no need to argue with a tenant that he, not the landlord, pays the rates. He knows it only too well.³¹

An interesting combination of a property qualification and weighted voting was found in Prussian cities before the First World War. The municipal code provided that the whole body of voters be divided into three classes in accordance with the amount of taxes paid by them, and that each class elect one-third of the city council. Class I was thus formed of the heaviest taxpayers; Class II of the moderate taxpayers; the great mass of voters were in Class III. Since each class elected one-third of the members of the council, it meant that the large taxpayers controlled that body. In Essen there were three voters in the first class, 400 in the second, and more than 20,000 in the third. Under this plan the 403 voters elected two-thirds of the members of the council; the other 20,644 elected one-third. In Berlin there were about 2000 voters in the first class and more than 500,000 in the third.

This system was defended on the ground that it would provide a safeguard against wastefulness and extravagance in municipal government. With control in the hands of the heavy taxpayers, the council would become efficient and businesslike in operation. This was what resulted from the system, but there were also some unsatisfactory aspects. As stated by Professor Munro:

The majority of the councillors, being chosen by men of wealth, became faithful mirrors of the business man's attitude toward public questions. They were keen for efficiency, economy, and business methods. They believed in administration by experts, in a close scrutiny of the budget, in everything that would cut the costs. On the other hand, the humanitarian aspects of municipal administration did not interest them much. Clean streets in the business district seemed to be of more importance than playgrounds down among the tenements. Hence the

³¹ W. B. Munro, *The Government of European Cities*, p. 85, by permission of The Macmillan Company, publisher.

foreign visitor who praised the "thrifty municipal housekeeping" of the Prussian city usually overlooked the lack of playgrounds for the children of the poor, the meagerness of facilities for public recreation, and the high infant death rate in the crowded sections. The efficient administration of a city is not merely a matter of applying the ideals and methods of the business man. It calls for the ideals and methods of the philanthropist as well.³²

The feeling of responsibility for keeping down taxes has been over-emphasized by advocates of property qualifications for voting. A feeling of responsibility for providing public social services is also important. The composition of the electorate should be such that both points of view may find expression at the polls.

Regardless of any merit there may be in property qualifications for voting, it seems safe to say that there is little possibility of their general adoption as a suffrage qualification. It is contrary to our ideas of democratic government and would be looked upon by many as a distinct step backward. It should be noted, however, that provision has been made in some states in recent years that only taxpayers shall be permitted to vote on bond issues. A Michigan constitutional amendment of 1932 provides: "Whenever any question is submitted to a vote of the electors which involves the direct expenditure of public money or the issue of bonds, only such persons having the qualifications of electors who have property assessed for taxes in any part of the district or territory to be affected by the result of such election or the lawful husbands or wives of such persons shall be entitled to vote thereon." In Detroit, this has resulted in the denial of the right to vote on such issues to from 50 to 60 per cent of the persons who go to the polls to vote on the election of officers.³³

In the depression years following 1930, the question of the relationship of a person's economic status and his right to vote appeared in another form. Thirteen states deny paupers the right to vote, and the question was raised in some of these as to whether such provisions should be applied to people who were on relief because of the general depression then existing. In a few communities, local

³² *Ibid.*, pp. 349-350, by permission of The Macmillan Company, publisher.

³³ D. S. Hecock and H. A. Trevelyan, *Detroit Voters and Recent Elections*, p. 10. Similar constitutional amendments were adopted in Arizona in 1930 and in Texas in 1932.

election officials used these statutes to remove the names of persons on the relief rolls from the voting lists. A strong protest was made against this action, and the movement did not spread.³⁴ That it would be not only unjust but unwise to deny these people the vote seems obvious. If the ballot is denied to persons who have become dependent as a result of conditions over which they have no control, the danger of their adoption of less orderly methods of expressing their views is too great.

NEGRO SUFFRAGE

In 1866 Congress passed the Fourteenth Amendment, and in 1868 it was ratified by the required number of states and put into operation. This amendment provides a penalty for states that exclude male citizens from the polls, the penalty being the reduction of representation in the House of Representatives. The Fifteenth Amendment, adopted in 1870, went further by providing: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

The whites in the South were determined to keep the Negro from gaining control of the machinery of government. Ku Klux Klan methods of intimidation, trickery, fraud, and other extra-legal (if not illegal) methods were relied upon for a time. These were followed by legal methods, such as literacy tests and property qualifications. Mississippi was one of the first states to work out a legal plan for excluding Negroes from the polls. In 1890 that state granted the suffrage to all male persons 21 years of age or over who had resided in the state two years and in the voting precinct one year. In addition, they must have paid all taxes, including a poll tax, assessed against them for the two years preceding the election, and must show a receipt for their payment. Finally, they must be able to read any section of the state constitution or be able to understand it and give a reasonable interpretation when it is read to them. The determination of whether the applicant fulfills these conditions is left to the local registration officials.

The comparatively long residence requirement would bar many

³⁴ Peter H. Odegard and E. Allen Helms, *op. cit.*, pp. 370-372.

Negroes from the polls, as they are somewhat unsettled in their place of living. Being rather careless, the uneducated Negro will probably be unable to produce his tax receipts; the registration officers usually forget to ask the white voter for his. If the Negro does preserve his tax receipts for two years, some scheme may be devised to encourage him to part with them before the election. He may be invited, as has been done, to use his receipt as an admission ticket to a circus brought to town the week preceding election.³⁵ Finally, it is doubtful if he can read the constitution; and in any case there is little chance that he can explain it to the satisfaction of an election board of white men. This provision was attacked before the Supreme Court of the United States as being contrary to the Fifteenth Amendment. The Court held, however, that the provision did not, on its face, deny or abridge the right of any citizen to vote on account of race, color, or previous condition of servitude.³⁶

Such a plan as that of Mississippi might exclude unpropertied illiterate whites. In 1895, South Carolina devised the "grandfather clause" to meet this situation. Under this provision, if the person himself, or his father or grandfather, had the right to vote on or before January 1, 1867, he was eligible to vote without meeting the property or literacy tests. Louisiana, North Carolina, and Oklahoma also placed grandfather clauses in their constitutions. In 1914, the Supreme Court of the United States declared such provisions unconstitutional as being in conflict with the Fifteenth Amendment.³⁷

Texas passed an act in 1923 which was devised to meet the situation relative to Negro voting. This provided that "in no event shall a Negro be eligible to participate in a Democratic party primary." As the real contest in the South is in the Democratic primary, the Negro was thus barred from effective participation in the election of public officers. His participation would be unimportant in a southern state, the Democratic nominee being assured of election. The framers of the law probably felt that the Supreme Court would

³⁵ H. R. Bruce, *op. cit.*, p. 458.

³⁶ *Williams v. Mississippi*, 170 U.S. 213, 42 Law Ed., 1012 (1898).

³⁷ *Guinn v. United States*, 238 U.S. 347, 59 Law. Ed. 1340 (1914). In Maryland, by act of 1908, the grandfather clause was applied to municipal elections in Annapolis. Following the principles in *Guinn v. United States*, this act was declared unconstitutional. *Myers v. Anderson*, 238 U.S. 368, 59 Law. Ed. 1349 (1914).

follow the Newberry decision and hold that primaries were outside the limitations imposed upon "elections" by the Fifteenth Amendment.³⁸ In 1927, however, the Court held the act unconstitutional under the clause in the Fourteenth Amendment which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. The Court stated that it did not find it necessary to consider the constitutionality of the act under the Fifteenth Amendment "because it seems hard to imagine a more direct and obvious infringement of the fourteenth. That amendment, while it applies to all, was passed, as we know, with a special intent to protect the blacks from discrimination against them."³⁹

The Supreme Court has held in several cases that the Fourteenth and Fifteenth Amendments both relate to and limit action by states rather than by individuals.⁴⁰ Acting upon this principle, Texas then sought to secure the barring of Negroes from Democratic primaries by another method. By legislative act it recognized the right of a political party to define its own membership. It was, of course, the understanding that the Democratic party would so define its membership as to exclude Negroes; and this was actually done. On the principle stated above—namely, that the Fourteenth and Fifteenth Amendments are limitations on state action only—it was believed that a law limiting voting in primary elections to party members would be upheld, even though the state executive committee of the Democratic party, acting under authority of the state law, defined its membership so as to exclude Negroes. In a case before the Supreme Court in 1932, this too was declared unconstitutional as denying the Negro the equal protection of the laws. The Court reasoned that the power of the executive committee of the party was

³⁸ *Newberry v. United States*, 256 U.S. 232, 65 Law. Ed. 913 (1921).

³⁹ *Nixon v. Herndon*, 273 U.S. 536, 71 Law. Ed. 759 (1927). J. E. Pate, "The Texas White Primary Law," 16 *Nat. Mun. Rev.* 617 (Oct., 1927); R. W. MacDonald, "Negro Voters in Democratic Primaries," 5 *Texas Law Rev.* 393 (June, 1927).

⁴⁰ For cases holding that the Fourteenth Amendment relates to action by states and not by individuals, see *Virginia v. Rives*, 100 U.S. 313, 25 Law. Ed. 667 (1880); *United States v. Cruikshank*, 92 U.S. 542, 23 Law. Ed. 588 (1876); *Civil Rights Cases*, 109 U.S. 3, 27 Law. Ed. 835 (1883). For a similar interpretation of the Fifteenth Amendment, see *United States v. Reese*, 92 U.S. 214, 23 Law. Ed. 563 (1876); *James v. Bowman*, 190 U.S. 127, 47 Law. Ed. 979 (1903).

derived from the statute passed by the legislature. The statute thus made the party's state executive committee the agent of the state legislature in determining qualifications for primary elections. The discrimination against Negroes therefore issued from state law and was, in effect, a denial by the state of the equal protection of the laws.⁴¹

After these decisions it appeared that the way to accomplish the purpose sought by the Texas law and yet avoid the constitutional attack made in earlier cases was for the legislature to repeal all legislation on the subject. The party, acting through its state convention, could then define its membership so as to exclude Negroes. This was the procedure followed in Texas, and it was upheld by the Supreme Court in 1935 in the case of *Grovey v. Townsend*. The only power involved, according to the Court, was that of a political party to determine who should have the privilege of membership. Since the Court "was not prepared to hold that in Texas the state convention of a party has become a mere instrumentality or agency for expressing the voice or will of the state," there was no interference with the constitutional rights of Negroes.⁴²

The door was opened for the reversal of this position when in 1941 the Supreme Court held, in a case which involved no question of racial discrimination, that a primary election is an essential and integral part of the election machinery of the state.⁴³ In 1944, the issue of Negro participation in party primaries was again before the Court and the decision in *Grovey v. Townsend* was overruled. The Court stated that its decision in 1941, holding that a primary was part of the election machinery of the state, had "a definite bearing on the permissibility under the Constitution of excluding Negroes from primaries." After pointing out that on many points parties and party primaries in Texas are regulated by statute, the Court held the party to be "an agency of the state in so far as it determines the participants in a primary election." The Court went on to say that in effect the State of Texas "endorses, adopts, and enforces the discrimination against Negroes, practiced by a party

⁴¹ *Nixon v. Condon*, 286 U.S. 73, 76 Law. Ed. 984 (1932). Also see R. E. Cushman, "Constitutional Law in 1931-32," 27 *Am. Pol. Sci. Rev.* 54 (Feb., 1933).

⁴² *Grovey v. Townsend*, 295 U.S. 45, 79 Law. Ed. 1292 (1935).

⁴³ *United States v. Classic*, 313 U.S. 299 (1941).

entrusted by Texas law with the determination of the qualifications of participants in the primary. This is state action within the meaning of the Fifteenth Amendment."⁴⁴ The Court in overruling *Grovey v. Townsend* has taken the position that persons may not because of their color be denied the right to vote in both elections and primaries, either directly by the state or indirectly by a political party. Some southern states propose—South Carolina has already acted—to attempt to circumvent the decision in *Smith v. Allwright* by repealing all direct primary legislation so that the Democratic party will become a "private club or organization" which can bar Negroes from belonging to it and from participation in its activities.

Where the non-partisan ballot is used, the barring of Negroes from Democratic primaries did not affect their participation in city elections. This has, in fact, afforded the greatest opportunity for voting by Negroes in the South, for many cities which have the commission and city-manager form of government use the non-partisan ballot. However, some southern cities which operate under the commission form of government used the white primary to make Negro voting ineffective in city elections. But in general the Negro has had a more important part in municipal than in county or state elections. The 1944 decision of the Supreme Court previously discussed may change this situation.

Referendums on bonds, tax rates, charter amendments, and city boundary extensions also bring out a comparatively large Negro vote. The opportunity offered the Negro for voting here is the same as in non-partisan city elections, the white primary bar not applying. One writer has said: "As these referenda did not on the surface effect 'white supremacy,' negrophobia did not operate in campaigns centering about them. Indeed, campaigning for Negro votes was much more widespread and open in such elections than in any other type, and more cases came up in which it could be fairly concluded that the Negro vote was the determining factor."⁴⁵

It must not be implied from the above, however, that Negro voting in city elections in the South is becoming general. For, as

⁴⁴ *Smith v. Allwright*, 321 U.S. 649 (1944).

⁴⁵ Paul Lewinson, *Race, Class and Party*, Oxford University Press, New York, 1932, p. 150.

Paul Lewinson says in his study of this question: "Yet it must always be recalled that the Negro vote was on the whole small in the South; referenda, like non-partisan city elections, were but outstanding exceptions gaining prominence against the background of Negro nonvoting."⁴⁶

PERSONS DISQUALIFIED FOR VOTING

Felons, idiots, and the insane are generally disqualified for voting by constitutional or statutory provision. Nearly all states disqualify for various minor offenses—bribery and election offenses in approximately one-half the states, including betting on elections in a few of them. Paupers and vagrants and persons under guardianship may not vote in about one-fourth the states. Dueling, malfeasance, desertion from military and naval service, and teaching polygamy are other grounds for denying the suffrage.

NON-VOTING

No complete figures are available to show the extent to which voters take part in municipal elections. The incomplete reports available indicate that the percentage of the eligible voters participating is small.⁴⁷ "As things are today," states Frank R. Kent, "in nine-tenths of the elections in every city and state—and even in Presidential elections—the result is decided not by the majority, but by a small minority, largely made up of machine politicians."⁴⁸ Generally the vote in a city is greater in state and national elections than in municipal elections. In the municipal campaign of 1927 in Chicago, when William Hale Thompson defeated Mayor Dever, the total vote was just under 1,000,000; in the following year the total vote cast in that city for presidential candidates was 1,290,965. In

⁴⁶ *Ibid.* Mr. Lewinson summarized his investigation of the actual participation of Negroes in elections in the South as follows: "There were many fewer Negro voters than an Abolitionist might hope, but rather more than even Southerners suspected."

⁴⁷ Simon Michelet, "The Millions of Americans Who Fail to Vote," 21 *Current Hist.* 247 (Nov., 1924); A. M. Schlesinger and E. M. Eriksson, "The Vanishing Voter," 40 *New Repub.* 162 (Oct. 15, 1924).

⁴⁸ F. R. Kent, *The Great Game of Politics* (1930), p. 192.

1931 Mayor Thompson was defeated by Anton J. Cermak after a bitterly fought campaign, a total of 1,148,121 votes being cast. In the presidential election the following year, 1,394,175 votes were cast in that city. In the mayoralty election of 1933 in New York City, a bitter campaign was waged in the three-cornered fight between Mayor John P. O'Brien, Fiorello H. LaGuardia, and Joseph V. McKee. Though the New York newspapers commended the large turnout at the polls and referred to the "huge" vote, it was less than that cast in that city in the presidential election of 1932.⁴⁹

A study of voting in Detroit by Hecock and Trevelyan reveals that there has been greater interest there in state and national elections than in municipal. "The size of the vote," it was stated, "greatly depends upon the nature of the contest. A glance at the record of past elections revealed an interest in national elections far surpassing any others." And in most cases, the interest in the election of a governor was greater than in that of a mayor. In 1932, 87 per cent of the registered voters voted in the gubernatorial election; in 1933, 42 per cent voted in the mayoral contest. Fifty-two per cent of the registered voters went to the polls in 1934 to elect a governor; only 32 per cent voted in 1935 when a mayor was elected. The vote in 1936 when Governor Murphy was elected was 77 per cent; but in 1937 it was only 67 per cent when Mayor Reading was elected.⁵⁰

The lack of interest in local elections is also supported by a study made in Flint, Michigan. With a population of over 160,000, it was found that the eligible voters were divided into three groups: 30,000 active voters, 40,000 registered but not active voters, and 20,000 non-active non-registered persons who might become eligible voters. Only one-third of the eligible citizens were participating in elections, the percentage being smaller for state and local elections. Sixty-one per cent of the registered voters participated in the elections involving federal officials in the period studied, whereas elections concerning strictly state or local issues during the same period interested only 32 per cent of the total. The largest individual percentage of the registered voters to participate was at the presidential election in November, 1932, when 85 per cent went to the polls. The

⁴⁹ Presidential election, 1932: 2,191,817; mayoral election, 1933: 2,115,966.

⁵⁰ D. S. Hecock and H. A. Trevelyan, *op. cit.*, p. 8.

lowest percentage was at the state and local elections in March, 1935, when slightly less than 11 per cent of the registered voters participated.⁵¹

Recent studies in two university communities reported different findings. In his study of voting behavior in Ann Arbor, Michigan, James K. Pollock found the average number of persons voting in presidential elections to be almost three times as great as the number voting in city elections.⁵² Charles W. Smith, studying the electorate in Tuscaloosa, Alabama, found that the percentage of voters participating in city elections was about the same as that in state and national elections.⁵³ The percentage voting in the two cities in local elections was not greatly different; the variation came in the small participation in state and national elections in Tuscaloosa. This might be accounted for in part by the fact that Alabama is largely a one-party state; but even in the primary the vote was small.

In cities in which municipal elections are held on the same day as presidential and state elections, there is an increased vote for municipal offices. A study of the number of votes cast in council elections in 807 cities in 1936 showed that 78 per cent of the registered voters participated in the election when it was held in November at the time of the presidential election, as compared with 67 per cent in cities which held the election at some other time.⁵⁴ This supports the view that in general there is greater interest on the part of the electorate in state and national elections than in local.

The data available as to the relationship between the size of the city and the degree of electoral indifference are conflicting. On the basis of his study of voting in California, Charles H. Titus concluded that "as a city becomes larger in voting population the relative vote cast becomes smaller."⁵⁵ Data compiled by the editors

⁵¹ Max P. Heavenrich, "One-Third of Eligible Voters Participate in Elections," 20 *Pub. Management* 310 (Oct., 1938).

⁵² James K. Pollock, *Voting Behavior: A Case Study* (1939).

⁵³ Charles W. Smith, Jr., *The Electorate in an Alabama Community* (1942).

⁵⁴ *Municipal Year Book*, 1937, p. 180.

⁵⁵ Charles H. Titus, "Voting in California Cities, 1900-1925," 8 *Southwestern Pol. and Soc. Sci. Quar.* 382 (Mar., 1928); Charles H. Titus, "Rural Voting in California, 1900-1926," 9 *ibid.* 198 (Sept., 1928).

of the *Municipal Year Book* for 807 American cities support this view.⁵⁶ The Bureau of Urban Research of Princeton University, in a recent study, concludes that a higher percentage of persons exercise their local voting privilege in cities of over 500,000.⁵⁷

It should not be implied from the above discussion that the record is satisfactory in other than local elections. The non-voting in state and national elections is in many cases too high; but it is in the municipal elections that it is most serious. When we consider the percentage of our tax payments which go to finance local governments, and the extent to which our local governments affect our daily living (schools, police, fire, health, streets, etc.) it would appear that from a purely selfish interest the voters would participate to a greater degree in local elections.

This political indifference or failure of the electorate to vote has received much attention of recent years. Local service clubs, leaders in our political life, and various organizations have urged greater participation in elections by voters. A National Get-Out-the-Vote Club was organized in 1924. Appeals have been made to voters to go to the polls as a patriotic duty and a civic responsibility. Ballyhoo methods have been used to get the people to the polls. Boy Scouts have handed out tags to voters which read: "I have voted, have you?" In one city the Chamber of Commerce installed several telephones, and girls were hired to call all the voters on election day and urge them to go to the polls. The basis of such appeals has been, No matter how you vote, vote.

In discussing this problem of non-voting, Frank R. Kent, an able student of practical politics, has said: "This problem of getting back to government by the majority is the real one in America to-day. Solve it and it will solve all others." After expressing the opinion that the cost of government had been run up by political bosses and political machines, he continued: "The reason they have done it, and the reason they continue to do it is the indifference, the inertia, and the ignorance of the great masses of the voters." He stated that the one and only way to decrease the cost

⁵⁶ *Municipal Year Book*, 1937, p. 180.

⁵⁷ *Urban Planning and Public Opinion*, published by the Bureau of Urban Research, Princeton University (1942).

of government is by intelligent, informed, and regular voting by the people as a whole.⁵⁸

The question arises as to why people abstain from voting. The study of non-voting in Chicago by Merriam and Gosnell indicated that indifference and inertia were the chief causes.⁵⁹ This indifference is in large part the product of ignorance regarding the issues in a campaign. After pointing out that in our campaigns many voters remain befogged and confused, William B. Munro says:

In such cases is there anything to be gained by having them certify their bewilderment and lack of knowledge at the ballot box? It is hard to see what real service can ever be rendered to the cause of enlightened government by the mere expedient of herding to the polls, with some sort of militant propaganda, a large number of uninterested, uninformed, reluctant people who go because they are shamed into it by clarion calls to the performance of their duty as citizens.⁶⁰

This befogged and confused state of mind of the average voter, and the resulting political indifference, are due in part to the unreasonably heavy burden which has been placed upon him. As has been pointed out before, a complex and a difficult task faces the American voter. He not only elects his officers but through the direct primary he nominates them. The new device of democracy, the recall, is based on the principle that he will keep close watch over these officers after they have been elected. Now through the initiative and referendum he is asked to legislate. In view of this burden, one can easily subscribe to the following statement by Walter Lippmann:

⁵⁸ F. R. Kent, *op. cit.*, p. 192. For a statement of the evils of the neglect of civic obligations, see E. McQuillin, *The Law of Municipal Corporations*, vol. 1, sec. 114.

⁵⁹ From their study of the Chicago election of 1923 in which only 723,000 of the 1,400,000 potential voters took part, they concluded that 44.3 per cent of the absentees abstained because of indifference or inertia; 25.4 per cent, because of physical difficulties such as absence from home or illness; 12.6 per cent, because of legal and administrative obstacles, such as lack of residential qualifications or inferior facilities for voting; and 17.7 per cent because of disbelief in voting, such as woman suffrage or disgust with politics. C. E. Merriam and H. F. Gosnell, *Non-Voting*, p. 34.

⁶⁰ W. B. Munro, "Is the Slacker Vote a Menace?" 17 *Nat. Mun. Rev.* 86 (Feb., 1928).

There is nothing particularly new in the disenchantment which the private citizen expresses by not voting at all, by voting only for the head of the ticket, by staying away from the primaries, by not reading speeches and documents, by the whole list of sins of omission for which he is denounced. I shall not denounce him further. My sympathies are with him, for I believe that he has been saddled with an impossible task and that he is asked to practice an unattainable ideal.⁶¹

The suggestion most generally made for remedying electoral indifference is to simplify the electoral process so that the voter can understand the issues involved. Understanding and intelligence, it is believed, precede interest in elections. The aim should be to increase the total number of intelligent voters. This would be aided by less frequent elections, the election of fewer officers, clarification of the issues, and an improvement in the candidates. When fundamental issues of policy, such as the ownership of a water or light plant, are involved, we get out a large vote. If municipal campaigns were waged on fundamental issues of policy only, and if power and responsibility were concentrated in the hands of a few elected officers, this should do more to get out the vote than all the ballyhoo appeal to duty campaigns yet devised.⁶²

There seems to be a general impression that non-voting is more general among the well-to-do, educated classes of people, and that in the poorer precincts and wards a greater percentage of the voters go to the polls on election day. The explanation usually offered is that the politicians and the machine organization get out the controlled vote in these poorer wards, while no effort is made in the sections where the machine cannot control the vote so easily. The material which is available, however, indicates that the best neighborhoods do not make a poor showing in non-voting. This is the conclusion to be drawn from studies in 1915 of non-voting in Columbus and Cincinnati, Ohio; in Cambridge, Bos-

⁶¹ Walter Lippmann, *The Phantom Public*, p. 20, by permission of The Macmillan Company, publisher. See also Walter Lippmann, "The Causes of Political Indifference Today," 139 *Atlantic Monthly* 261 (Feb., 1927); A. J. Nock, "What the American Votes For," 28 *American Mercury* 176 (Feb., 1933).

⁶² See an excellent statement on this point by Professor Munro, 17 *Nat. Mun. Rev.* 80 (Feb., 1928).

ton, and Detroit in 1928; and in Delaware, Ohio, in 1925.⁶³ A recent study of Detroit shows that the better residential districts had a smaller percentage of non-voters than the city as a whole. The downtown business section, the Negro precincts, and the river wards had the highest percentage of non-voting.⁶⁴ As has been pointed out above, the study in Chicago made by Charles E. Merriam and Harold F. Gosnell indicated that electoral indifference was the chief cause of failure to vote and that this was closely associated with political indifference. Dr. Gosnell, in a more recent study of this problem, reached the conclusion that "persons with some knowledge of politics and government are much more apt to vote than those with little knowledge of governmental matters."⁶⁵ A recent study by the Bureau of Urban Research at Princeton University concludes that "urban voting participation increases as people are better educated."⁶⁶ In these studies the highest voter participation was found among the residents of the well-to-do neighborhoods, and the lowest voting records among the residents of the poor districts.⁶⁷

COMPULSORY VOTING

Compulsory voting has been suggested as a possible remedy for non-voting. Some form of compulsory voting has been used in Belgium, Spain, Czechoslovakia, Denmark, Holland, Hungary, and Luxembourg in Europe; in Argentina, Honduras, Mexico, and Sal-

⁶³ W. T. Donaldson, "Compulsory Voting," 4 *Nat. Mun. Rev.* 460 (July, 1915); B. A. Arneson, "Non-Voting in a Typical Ohio Community," 19 *Am. Pol. Sci. Rev.* 816 (Nov., 1925); W. B. Munro, "Is the Slacker Vote a Menace?"

⁶⁴ D. S. Hecock and H. A. Trevelyan, *op. cit.*, p. 6. Also see E. H. Litchfield, *Voting Behavior in a Metropolitan Area*, pp. 26-27.

⁶⁵ H. F. Gosnell, *Getting out the Vote*, pp. 109-110.

⁶⁶ *Urban Planning and Public Opinion*.

⁶⁷ C. E. Merriam and H. F. Gosnell, *The American Party System*, p. 409. The primary of 1926 in Illinois furnishes some evidence to the contrary. In this primary the percentage of voting in Chicago was 56.4. A special effort was made in this primary to get out the vote in the township of New Trier, comprising four wealthy North Shore residential suburbs of Chicago, a banner being offered to the village making the best showing. The results were: Kenilworth, 47.1 per cent; Winnetka, 44 per cent; Glencoe, 39.4 per cent; and Wilmette, 38.7 per cent. C. H. Woody, *The Chicago Primary of 1926*, p. 230.

vador in Latin America; and in New Zealand, Australia, and several Australian states.⁶⁸

The Belgian system of compulsory voting, which was adopted in 1893, appears to have been one of the most effective. A fine of one to three francs was provided for the first offense; for the second offense within six years, the fine ranged from three to 25 francs; for the third offense in ten years, the offender's name was posted on the wall of the city hall and another fine of from three to 25 francs was imposed; for the fourth offense within fifteen years, in addition to the fine of three to 25 francs, the law provided that the voter be deprived of the suffrage for ten years and declared incapable of receiving public appointment, promotion, or distinction of any kind. The law resulted in fewer abstentions from voting, but some persons showed their resentment by voting blanks.⁶⁹

The compulsory voting law passed in Australia in 1925 provided for a fine of ten dollars for failure to register or vote. The percentage of the electorate voting increased from under 60 to well over 90 per cent as a result of the passage of this act.⁷⁰

Compulsory voting has made little progress in the United States.⁷¹ The constitutions of Massachusetts and North Dakota have been amended to permit the use of a system of compulsory voting, but thus far the legislatures have taken no action.⁷² An attempt was made to get citizens to vote in Kansas City by levying a poll tax of \$2.50 which was to be remitted to everyone voting in the general city election. In effect it was a penalty of \$2.50 for failure to vote. This provision of the Kansas City charter was held unconstitutional by the Supreme Court of Missouri. The court reasoned that citizens are both subjects of the government and sovereigns of the government. Relative to the latter aspect, the court stated

⁶⁸ E. M. Sait, *op. cit.*, pp. 708-709; W. A. Robson, "Compulsory Voting," 38 *Pol. Sci. Quar.* 569 (1923).

⁶⁹ T. H. Reed, "Compulsory Voting in Belgium," 14 *Nat. Mun. Rev.* 335 (June, 1925). Statements as to voting practices in conquered European countries refer to the situation prior to World War II.

⁷⁰ I. W. Stratton, "American Citizenship and Australian Election Methods," 20 *Nat. Mun. Rev.* 90 (Feb., 1931).

⁷¹ Some forms of compulsory voting existed in several American colonies. See A. E. McKinley, *The Suffrage Franchise in the Thirteen English Colonies*; C. F. Bishop, *History of Elections in the American Colonies*.

⁷² Such an amendment was defeated in Oregon in 1920.

that the citizen has but "a single sovereign power—the power of the ballot."⁷³ Being a sovereign power of the voter, it could not be enforced by law. Thus, what seems to be the only attempt at a compulsory system of voting since the Revolution was held unconstitutional by this questionable line of reasoning.

There seems little defense for compulsory voting.⁷⁴ If it is the persons with little knowledge of governmental matters that do not vote, then little is to be gained by driving them to the polls by a compulsory law. That they would try to inform themselves on the issues if they were compelled to vote seems unduly optimistic. As you cannot compel the proverbial horse to drink after leading him to the trough, neither can you compel a man to prepare himself to assume the civic obligation of voting by a compulsory voting law. In fact, you cannot compel him to vote, as is shown by the blank ballots cast in countries having compulsory voting. There is some question as to whether we should not give more attention to those who do vote and less worry to those who fail to vote.

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⁷³ *Kansas City v. Whipple*, 136 Mo. 475, 38 S.W. 295 (1896), reprinted in T. H. Reed and Paul Webbink, *Documents Illustrative of American Municipal Government*, p. 440.

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Registration of Voters

The definition by constitutional or statutory provision of legally qualified voters is not sufficient. Some effort must be made to insure that only those who are legally qualified participate in elections. There developed early in this country, and more particularly in the cities, various kinds of fraudulent voting. Election investigations revealed the practice of voting on behalf of people who had moved out of the precinct or had died, and of using fictitious names. Persons designated by the political leader or boss did the illegal voting in such cases. Floaters were brought in and lodged for a short time in lodging houses and voted on election day. Repeaters were hauled from precinct to precinct to cast their votes, using a different name in each precinct.¹ In some cases they had the audacity to vote several times in the same precinct, merely changing coats or hats between votes. And in some instances, rather than bring in "repeaters" for this work, precinct election judges voted these names and placed the ballots in the box.² These fraudulent practices were an effective means by which a corrupt political machine could continue to control the city government.

There is evidence that fraudulent voting still continues in American cities. In a Philadelphia election in 1929, the voting list included "dead people, unnaturalized foreigners, and children."³ A New

¹ As their addresses they gave vacant lots, schoolhouses, and lodging houses where they were unknown.

² For methods of fraudulent voting, see "A Model Registration System," 16 *Nat. Mun. Rev.* 45 (Jan., 1927). The third revised edition of this report was published in 1939 by the National Municipal League. References in this chapter are to the 1939 edition.

³ M. C. Krueger, "Election Frauds in Philadelphia," 18 *Nat. Mun. Rev.* 294 (May, 1929).

York County grand jury in 1930 reported as follows: "Violations of the Elective Franchise Law are sufficiently general in this county to constitute a serious menace to fair and impartial elections. In many cases the importation of persons into election districts where they register but do not reside is conducted on a systematic basis."⁴ One writer, in considering the New York situation, said that "only an incurable innocent believes that votes decide elections."⁵

The belief has been expressed that 50,000 fraudulent votes are cast in Chicago in an election.⁶ The findings of a special investigation of election frauds conducted in that city have been summarized as follows:

In the investigation of ten precincts of the 20th ward it was found that 211 persons were willing to sign affidavits that they had not voted; 37 admitted not voting, but would not sign; 112 were listed as voting more than once; the names of 20 dead persons were affixed to ballots; 918 voters had moved, more than 80 per cent of them before primary election day, and 1611 voters were unknown at the addresses from which they were registered. There were 22 voters of whom information was not available; 100 registered from non-existent numbers; 42 registered from torn down houses; 22 from vacant lots; 21 from school houses; and 18 from outside the precinct. Votes were also cast in the names of five children who did not vote, the McQueeney investigation shows.⁷

The trial court, in reviewing the evidence of fraud in the 1925 municipal election in Louisville, said:

It is admitted by defendants' counsel that approximately five hundred illegal votes were cast and the proof shows that the number was larger than that. These were not ballots of qualified voters cast in an illegal manner, through ignorance or mistake. They were ballots cast by persons not entitled to vote at all, cast chiefly by hired impostors, impersonating registrants whose names were lawfully put upon the register a year earlier but who had meanwhile lost the right to vote in the precinct where registered by death or removal therefrom. There were a few who

⁴ Quoted in E. H. Lavine, *"Gimme," or How Politicians Get Rich*, p. 70.

⁵ *Ibid.*, p. 66.

⁶ C. H. Wooddy, *The Chicago Primary of 1926*, pp. 143-144.

⁷ *Chicago Daily News*, Sept. 29, 1926, quoted in 16 *Nat. Mun. Rev.* 60 (Jan., 1927).

voted twice and some where impostors voted the names of legal voters. Without other proofs, the mere fact that so large a number of false ballots were cast shows, of itself, that there was a concerted scheme to procure them. Things of this kind do not happen spontaneously. They are the product of a plan.⁸

Other cases of election frauds in American cities might be cited.⁹ Those referred to above are sufficient to give some idea of the extent of such practices and of the methods used. The registration of voters as a means of preventing these practices will be discussed in this chapter.

The registration of voters to prevent fraudulent voting is primarily an urban problem. In the earlier period of our history, when people were living in rural communities and every voter was personally known to his neighbors and to the judges who conducted the election, the determination of those who were qualified to vote was a simple problem. If an attempt was made to vote in the name of a person who had moved out of the precinct or had died, this was readily detected. But with the urbanization of the country, and especially with the growth of large cities, the problem became more difficult. The influx of immigrants and their naturalization aggravated the situation. The mobility of the urban population proved to be greater than that of the rural population. No longer could cities depend upon the personal acquaintance of election judges with the people residing in the precinct to assure that only those who were legally qualified actually voted.

Up to the time of the Civil War few states outside New England required a voter to register before an election. The voter simply went to the polling place, and if his right to vote was challenged he made affidavit that he was a legal voter or produced other voters as witnesses to identify him. With the growth of cities, however, such a plan proved inadequate to prevent fraudulent voting. Registration laws were passed in an effort to curb the evil.

Some form of registration of voters is now found in every state

⁸ Quoted in D. R. Castleman, "Louisville Election Frauds in Court and Out," 16 *Nat. Mun. Rev.* 761 (Dec., 1927).

⁹ See, for example, S. C. Stimson, "The Terre Haute Election Trial," 5 *Nat. Mun. Rev.* 38 (Jan., 1916); A. F. Macdonald, "Philadelphia's Political Machine in Action," 15 *ibid.* 28 (Jan., 1926); E. M. Martin, "Prayers and Pineapples in Chicago Politics," 17 *ibid.* 255 (May, 1928).

except Arkansas and Texas.¹⁰ In some states, the laws apply only to cities of over a certain population or to the more populous counties. Where provision is made for the registration of voters in both urban and rural areas, a more elaborate system is usually provided for the cities. There has clearly been recognition on the part of lawmakers that dishonesty in elections is primarily a city problem.¹¹

In most states registration is an absolute requirement for voting, and only persons who register may vote.¹² In the states where registration is not an absolute requirement, an unregistered voter is permitted to swear in his vote at the polls. Such an affidavit usually must be supported by one or two legal voters as witnesses. In cities where the swearing-in of voters is permitted, this is generally taken care of by the political organization, a notary and witnesses being provided by the party for this purpose. It is in the machine-controlled, transient precincts where the swearing-in of votes is most used.

A system under which registration is not an absolute requirement for voting is unsuited to cities. Experience shows that it will be used by political machines for corrupt purposes. But in some states, laws making registration an absolute requirement have been held invalid on the ground that a qualified voter cannot be deprived of his right to cast his ballot on election day because of his failure to register.¹³ Provision must be made in such states for

¹⁰ *Registration for Voting in the United States*, Council of State Governments (1946). This is a revised edition of J. B. Johnson and I. J. Lewis, *Registration for Voting in the United States* (1941). In Arkansas, registration is prohibited by the constitution (Art. III, sec. 2), and the constitution of Texas states that registration may be established for cities over 10,000 population. No system has been established in the latter state, poll tax receipts being used to determine the eligibility of voters.

¹¹ It should be pointed out, however, that voting frauds and election scandals in rural sections are not unknown.

¹² Where registration is an absolute requirement for voting, the system is often referred to as compulsory registration. The term is somewhat misleading. Registration of voters in such states is not compulsory. Persons who do not care to vote are not required to register. Thus it seems better to refer to this system as the absolute requirement of registration for voting. For details as to the registration system in the various states as of 1946, see Council of State Governments, *op. cit.*

¹³ *Dells v. Kennedy*, 49 Wis. 555, 6 N.W. 246 (1880); *Page v. Allen*, 58 Pa. St. 338 (1868); *White v. Multnomah County*, 13 Ore. 317, 10 Pac. 484 (1886). For an excellent discussion of the law of registration, see J. P. Harris, *Registration of Voters in the United States*, chap. xii.

swearing-in the vote of the unregistered voter at the polls. However, the courts of most states have taken the view that requiring the voter to register does not constitute an added qualification for voting but is merely a means of determining whether a person possesses those qualifications.¹⁴ The Supreme Court of Illinois has expressed this view as follows: "By prescribing certain qualifications for voters the constitution necessarily intended that the legislature should provide some mode of ascertaining and determining the existence of those qualifications. A registry law is merely a mode of ascertaining whether or not a man possesses the necessary qualifications of a voter."¹⁵

On the basis of public policy, there is little defense of the practice of swearing-in the vote of the unregistered voter at the polls. If there is a permanent system of registration, with opportunity to register throughout the year, it seems unnecessary to permit the swearing-in of votes on election day in order to be "fair to the voter." In the states where the courts have held that provision must be made for swearing in votes, the legislature should impose very strict requirements. The Wisconsin law, which provides that the witness must be a freeholder and that no freeholder may witness for more than five electors, is a desirable type of statute on this point. The practice followed in some Michigan cities of permitting votes to be sworn in on election day only at the central election office and not in the precincts also appears to be desirable. If the swearing-in of votes cannot be eliminated it should be strictly regulated and its use reduced to a minimum.

In some states registration is required only for general elections, it being unnecessary to register to vote in primaries or in municipal, judicial, or special elections.¹⁶ And in a few states there are separate registration systems for municipal elections and for county and state elections. The Committee on Election Administration of the National Municipal League has criticized both of

¹⁴ For the argument of the courts in such cases, see *Davis v. City Council of Dawson*, 90 Ga. 817, 17 S.E. 110 (1893); *Buckner v. Gordon*, 81 Ky. 665 (1884).

¹⁵ *People v. Hoffman*, 116 Ill. 587, 8 N.E. 788 (1886).

¹⁶ See "A Model Registration System," 1939, p. 17. For a comparison of registration machinery and procedure in Kansas City, Milwaukee, Minneapolis, St. Paul, Omaha, and Des Moines, see *Registration and Elections in Six Cities*, published by Kansas City, Mo., Public Service Institute (1930).

these practices. It points out that most voting frauds have been committed in the primaries, and that the safeguard of registration is needed there and in municipal elections, as well as in elections for county and state officers. Setting up two separate registration systems increases the cost and places a greater burden on the voter. Since, as pointed out in an earlier chapter, the qualifications for voting are usually the same for all elections, there is no justification for more than one registration system.

PERMANENT VERSUS PERIODIC REGISTRATION

Registration systems may be classified as permanent or periodic. Under the periodic system a completely new list of voters is compiled at regular intervals. This is usually done every one, two, or four years; periodic registrations are held in Nebraska every six years, and in South Carolina a new registration is conducted every ten years. Provision is made for the registration of new voters between the periodic registrations. At the end of the period, when a new registration is held, these lists are discarded, and entirely new lists are made. Under the permanent system of registration a voter's name remains on the list as long as he resides in the precinct. These lists are never discarded as in the case of periodic registration, but an effort is made to keep them corrected by dropping and adding names.

Thirty-eight states were reported to be using permanent registration in 1946, but in many cases this was limited to certain areas.¹⁷ In the states where permanent registration is limited to some areas, the areas are generally all incorporated areas above a certain population. Among the larger cities which now use a permanent system of registration for voters are Boston, Chicago, Cleveland, Cincinnati, Detroit, Kansas City, Los Angeles, Milwaukee, Minneapolis, Philadelphia, Pittsburgh, San Francisco, St. Louis, and St. Paul.

REGISTRATION PROCEDURE

The registration of voters is usually conducted by the same officers that are in charge of elections. However, in some states

¹⁷ See note 10, above.

registration is conducted by a separate board or officer. The city or town is the unit of registration and election administration in New England; the county is the unit in about 20 states; and in several states the county is the unit, but large cities have control within their boundaries. In the next chapter further consideration will be given to the organization provided for registration and election administration.

The Committee on Election Administration of the National Municipal League in its report in 1939 favored a single commissioner of elections, as in Rochester and Omaha.¹⁸ The work of elections and registration is largely administrative, so there is little justification for a board. The reason for using a board for this work is probably to secure bipartisan representation, in the belief that this is a means of securing honesty in election and registration administration. In actual practice, the bipartisan board has usually meant partisan administration by the dominant party. The use of a single commissioner should secure more efficient and honest administration, and this is the purpose of an election and registration system.

Two methods are used for the registration of voters. One is the registration of voters in each voting precinct, and the other is registration at a central office. Precinct registration is confined to a few days each year; the number varies, but usually two or three days are provided. A registration day is often set by law on the fourth and second Tuesdays before the election. At such times new voters go to the regular polling places and enroll as voters. If it is a general periodic registration, all voters must register. Central registration, on the other hand, is conducted throughout the year at the central office, and often at branch registration offices outside on designated days before elections.

Precinct registration is most generally used to register voters in our cities. Central registration, however, is now used in Boston, Providence, Milwaukee, Minneapolis, St. Paul, Omaha, Topeka, Portland (Ore.), San Francisco, and Los Angeles. Where central registration is used, a system of permanent registration is generally found. Periodic registration, on the other hand, is usually conducted through precinct officers. But some cities which register voters

¹⁸ "A Model Registration System," 1939, p. 37.

periodically make use of the central registration plan. Instead of precinct registration officers being used, field registration officers canvass the city and register voters, being paid a registration fee of eight to ten cents per registration.

A more satisfactory registration staff is usually found under central registration than under the precinct system. Even under central registration, however, the permanent office force is generally selected on the basis of party considerations, the actual selections being made by the party organization.¹⁹ Boston and San Francisco have placed the office employees in the registration system under the civil service system of the city. Precinct registration officers are also generally appointed on the recommendation of the party organization, but a few cities—among them Detroit, Omaha and St. Louis—do not consider political affiliations or recommendations in making appointments. Allowing the party organizations to designate the election officers offers them a means of rewarding faithful party workers; but it is not conducive to efficiency and economy, or to honesty in the conduct of either registration or elections.

Personal application for registration is required in most states. Though several states have provided for absentee voting, only a few provide for absentee registration. States which provide for some form of absentee registration often require personal registration in the large cities. Some states permit registration by mail, and in others a registered voter may register for members of his family and his servants. The amount of information secured from the applicant at registration varies from his name and address to over 30 separate items of information required in some states. Where the closed primary is used, the registrant is generally required to state his party affiliation if he desires to vote in primary elections. The literacy test as applied by registration officers serves to disfranchise some persons, especially Negroes in the South.

A satisfactory registration system must make some provision for the identification of the voter at the polls. The system should guarantee that the person voting is the one who is registered. If the registration system secures this, fraudulent voting will end. No system of identification will prevent fraudulent voting if the precinct election officers are dishonest and have orders from the polit-

¹⁹ *Ibid.*, pp. 35-42.

ical leaders to cooperate in securing a "good vote" in that precinct. But some systems of identification are more effective in helping the honest precinct election officers who want to prevent fraudulent voting. And a good system of identification will make it more difficult for the dishonest official to connive at fraudulent voting. The most common method now used to identify the voter at the polls is to have on the registration record a personal description of him, such as height, weight, and color of eyes and hair. As pointed out above, in some cities over 30 such items of information are recorded about the voter. The difficulty with this plan is that the information is not used by the precinct election officers because of lack of either time or inclination. And in any case they offer only a rough means of identification.

The most satisfactory method of identifying the voter when he comes to the polls is to require his signature when he registers and again when he votes.²⁰ While the signature is required in several states when the voter registers, the signature identification when he comes to vote was not widely used until recently. For several years it has been used in New York City and other large cities in that state, in Omaha, in the larger cities in Minnesota, and throughout California. In recently enacted permanent registration laws, applicable in most cases to the larger cities, provision has been made for the signature identification when the voter comes to vote in Illinois, Indiana, Michigan, Missouri, Ohio, Pennsylvania, and Washington. The requirement that the voter sign his name when he votes, and the comparison of this with his signature at the time of registration offers an effective means of identifying voters, and is the best guarantee against fraudulent voting. The objection often raised to this method, that it will slow up the election process, has not been borne out in actual practice. The successful use of this method in several large cities should lead to its use in other cities in the future.

The names of voters are generally entered in bound volumes for each precinct. This is the older type of registration record and is still used in most states. Loose-leaf or card records are now used in a number of states. The bound-volume type of registration is unsuited to permanent registration systems.

²⁰ *Ibid.*, p. 70.

When a voter moves from one precinct to another, he must usually register in the new precinct, especially if the precinct system of registration is in force. Unless the precinct officials discover that he has moved out of the precinct, his name will remain on the list in his old precinct and the way for fraudulent voting is open. Some states meet this situation by requiring a voter to secure a cancellation of registration in his old precinct before he may register in the new one.

Where central registration is used, the previous registration is canceled when the voter appears and asks to be enrolled as a voter at his new address. The system is effective in canceling previous registration, but it may be criticized because of the inconvenience to the voter in requiring him to reregister, especially when he moves only from one precinct to another within the same city. To meet this criticism, another method of transferring registration is used in Milwaukee, Minneapolis, and St. Paul. A registered voter may transfer his registration from one precinct to another by sending to the central office a request that his registration be changed from his old to his new address. If the signature corresponds with that on his original registration card, his address is corrected on his record and it is filed in his new precinct. Though the application for transfer need not be made on the regular form, newspapers often print the transfer form before elections and politicians circulate post-card application forms for transfer. This is the most satisfactory method devised for the transfer of registration when a voter moves from one precinct to another.

Whether central or precinct registration of voters is used, a certain time period is provided between the last possible date of registration and the election. Under the precinct registration plan, this is generally two to four weeks before the election, and under central registration the poll books are closed a specified time before the election. The intention is that during this period political parties and interested citizens will investigate the lists and see that the names of persons not legally qualified to vote are removed. Actual practice has demonstrated that this does not successfully purge the lists of those not qualified to vote. Though in most states registration officers make no attempt on their own initiative

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to clear the lists of those not legally qualified to vote, provision for this is now made in a few states.

Among the means used to keep the registration lists free of the names of persons not legally qualified to vote is the cancellation of registration in the old precinct upon registration in the new, which has already been discussed as an intra-city problem. California and Wisconsin attempt to provide such cancellation on a state-wide basis. When a voter in California moves from one county to another, or in Wisconsin from one city to another, he is required, when he registers again, to sign an authorization to cancel his previous registration. This authorization is sent to the county or city where he was formerly registered. Joseph P. Harris suggests that much would be gained from some such nation-wide transfer system of registration.²¹

Death reports are used in several states to purge the voters' lists. Changes of address by users of local gas and electric utility services, moving reports compiled by the Chamber of Commerce, the sending of mail to a voter's address and cancellation of registration when the mail is not delivered, and cancellation on the basis of the precinct officers' personal knowledge that individuals have died or moved out of the precinct are used to purge the lists of the names of persons no longer legally qualified to vote in the precinct. Marriage reports are also used to clear the lists, it being necessary for women to register under their new names.

A house-to-house canvass prior to important elections is now provided for in 12 states to clear the lists of persons who are no longer qualified voters in the precinct. In Boston and Milwaukee this work is done very satisfactorily by the police, but in New York City and Baltimore the police canvass is not considered successful.²² An annual census of all adult residents is taken by the Boston police department, and this is used not only for election registration but for other purposes as well. This census is useful in removing from the voting list the names of persons who have moved or died, and also in transferring the registration of voters who have moved from one precinct to another within the city. In

²¹ J. P. Harris, *op. cit.*, p. 216.

²² "A Model Registration System," 1939, p. 27.

Omaha the canvass is made by inspectors who are under the supervision of the election commissioner.

Cancellation of registration for failure to vote is used in several states. Among the larger cities using this plan are Chicago, Minneapolis, St. Paul, Denver, Salt Lake City, and Portland (Ore.). Denver and Portland rely almost entirely upon this method for purging the registration lists of persons who are not qualified to vote. Cancellation is usually made if the person fails to vote during a two-year period, but in Oklahoma failure to vote at three successive elections is necessary for cancellation. A form notice is generally mailed to the voter, notifying him of the proposed cancellation; in some cases he may reinstate his registration by signing and returning the notice. This plan does not disfranchise electors who fail to vote, for they can keep their name on the lists either by mailing to the registration office the signed request that their names be retained on the list, or by applying personally to the registration office. If the signature corresponds with that on the original registration, the name is retained on the list.

CONCLUSION

Three tests can be applied to a system of registering voters: (1) Is it effective in preventing fraudulent voting? (2) Is it convenient for the voters, or does it place an undue burden upon them? (3) Is it economical in operation or is the cost too great? Measured by these tests, a system of permanent central registration seems the most satisfactory.

Experience over a period of many years in several cities indicates that fraudulent voting can be prevented under a system of permanent registration. Opponents of permanent registration say that it will lead to inflated lists and that a new registration at stated intervals is necessary to clear the lists of persons who have died or moved out of the precinct. Experience with permanent registration does not support this objection.²³ By using the police, as in Boston and

²³ For voting frauds committed in Louisville in 1925 under a permanent registration system, see D. R. Castleman, *op. cit.*; and for unsatisfactory results in Philadelphia, see John P. Horlacher, "The Administration of Permanent Registration in Philadelphia," 37 *Am. Pol. Sci. Rev.* 829 (Oct., 1943); William B. Lex, "Election Frauds Go Unchecked," 33 *Nat. Mun. Rev.* 226 (May, 1944).

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Milwaukee, the names of persons no longer resident in the precinct may be effectively removed.²⁴ A single precinct inspector of elections may also be used to accomplish this purpose. The election commissioner in Omaha selects precinct inspectors to do this work without regard to their party affiliation. He has been able to secure competent persons to act in this capacity, and the cost has been only 2.8 cents per registered voter.

A system of permanent central registration is also satisfactory from the point of view of convenience to the voter. It avoids the necessity of periodic registration if he is to remain on the poll lists. A system of transfer of registration, such as that used in Milwaukee, Minneapolis, and St. Paul, is the most convenient yet devised for the voter, and at the same time it adequately protects the voting lists. If the city is large and the number of new voters seems sufficient to justify district registration, offices can be opened before regular elections for the registration of new voters, thus enabling them to avoid a trip to the central headquarters for this purpose. In Omaha registration officers are sent out to different sections of the city for registration sessions of one or two days in length prior to each election. Branch registration offices are also used in Minneapolis for short periods before elections. In California and in parts of Massachusetts and Rhode Island, central and branch registration are combined. Seattle and Detroit combine central registration throughout the year with precinct registration on a few days before elections. This has been done in Milwaukee when new sections have been taken into the city and the voters are being registered for the first time. The statement that central permanent registration places an undue burden on the voter is unwarranted. If properly administered, it is more convenient for him than the periodic precinct registration.

The registration of voters in the large cities of this country usually costs from 50 cents to \$1.00 annually per registered voter, but under some of the best systems the cost is less than 25 cents per registered voter.²⁵ The cities which have adopted permanent registration have found it an effective means of reducing election costs. In a study of 105 cities made by the United States Conference of

²⁴ "A Model Registration System," 1939, p. 63.

²⁵ J. P. Harris, *op. cit.*, p. 241.

Mayors in 1933, the annual registration cost per voter ranged from 13.4 to 55.4 cents for the cities using permanent registration, and from 58 cents to \$1.08 in cities with periodic registration.²⁶ The 1939 report of the Committee on Election Administration of the National Municipal League states that a city using periodic registration may reduce its registration costs by one-half or more by the use of permanent registration. A system of permanent central registration has proved to be less expensive than periodical precinct registration.²⁷ The number of officers used in each precinct under the precinct system of registration is greater than is needed. At a general registration when all the voters are registered, the per capita cost is high; but prior to intermediate elections when only new voters are registered, the cost becomes unreasonably high. In Chicago it has been as high as \$10.00 per person registered at these intermediate registrations. The registration held before the city election in March, 1921, averaged \$12.81 per person registered.²⁸ In Detroit it was found that registration for intermediate elections sometimes cost over \$7.00 per voter registered. Under a system of permanent registration, the number of employees can be adjusted to the work to be done more satisfactorily than under precinct registration.

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²⁷ Cf. Frank H. Ritter, "Permanent Registration for Elections Unsuitable for Large Cities," 14 *Nat. Mun. Rev.* 532 (Sept., 1925).

²⁸ C. H. Wooddy, *op. cit.*, p. 264. The registration of voters in Chicago in October, 1932, cost \$671,390, or 88 cents per name. For a discussion of possible savings under permanent registration, see 15 *Pub. Management* 141 (May, 1933).

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Nomination of Candidates for Municipal Office

Control of the machinery of government in the American city is coveted by individuals and by groups of individuals or parties. The result has been a great number of candidates seeking the 66,000 elective municipal offices in this country. In a city having partisan elections, a system of nomination enables a party to agree upon a candidate upon whom it will concentrate its strength in the election. Only in this way can it meet the opposition party with a united front. If one party divided its strength in an election among several candidates while the opposition agreed on one candidate, clearly there would be a distinct advantage to the party which thus concentrated its strength. This simple fact probably accounts for the earliest systems of nominations.

Cities having a non-partisan system of elections also find a system of nomination to be desirable. Generally there is a multiplicity of candidates for municipal office in this country. To simplify the electoral process, some method of eliminating candidates so as to make easier the voter's task in the election is desirable. This process of the elimination or weeding out of candidates under a non-partisan system of elections is known as nomination. Under a non-partisan system, nomination may be necessary, as will be pointed out later, in order to avoid plurality elections.

The advantage in a system of popular government of selecting candidates prior to the time of formal election has been recognized from the earliest times. One writer has pointed out that as early as Biblical times there was an appearance of the "parlor caucus" in the choice of the judges of Israel.¹ Self-nomination or self-an-

¹ G. W. Lawton, *The American Caucus System*, pp. 26-28.

nounced candidacy was used in Rome; a similar plan arose in England when popular government began to develop. However, small groups of wealthy landowners soon began the practice of nominating candidates for office. These seem to have been the only methods of nomination in use by English-speaking people, and consequently the ones with which the colonists were familiar.²

Self-announcement or self-nomination was apparently the method of nominating candidates for elective office in the southern colonies. As in England, however, cliques of landowners arose to control and dictate candidacies for office. This method of nomination for local officers continued in the southern and southwestern states as late as the Civil War.

Self-announcement as a method of nomination was also used to some extent in New England and the Middle Colonies. But nominations in these sections were usually made at "parlor caucuses." These were private conferences or meetings of persons especially interested in controlling public affairs. Such groups agreed upon candidates previous to election, a procedure which corresponded to the convention and direct primary of more recent times.

It was not until the difficulties between the colonies and the Crown developed that party lines became clearly drawn. Patriotic clubs or societies were organized, which in many sections had as one of their functions the selection of candidates for elective offices. These clubs were generally known as "caucuses." The Boston Caucus Club in the earlier period of its existence seems to have been quite limited in membership; but gradually the membership was extended, and meetings were held more publicly.

The nature and work of the Boston Caucus Club in the later colonial period is shown by the following extract from the diary of John Adams under the date of February, 1763:

This day learned that the Caucus Club meets at certain times in the garret of Tom Dawes, the Adjutant of the Boston Regiment. He has a large house, and he has a movable partition in his garret which he takes down, and the whole club meets in one room. There they smoke tobacco till you cannot see from one end of the garret to the other. There

² F. W. Dallinger, *Nominations for Elective Office in the United States*, chap. i.

they drink flip, I suppose, and there they choose a moderator who puts questions to the vote regularly; and selectmen, assessors, collectors, firewards and representatives are regularly chosen before they are chosen in the town.³

The following entry in the journal of the North End Caucus in Boston also illustrates the method of nominating candidates: "Voted,—That this body will use their influence that Thomas Cushing, Samuel Adams, John Hancock and William Phillips be Representatives for the year ensuing."⁴ The appointment of conference committees by one caucus to confer with similar committees from other organizations might be looked upon as the forerunner of the modern delegate convention.

The caucus was well established in New England and the Middle Colonies by the time of the Revolution. After the war it lost its secret character and became a meeting of the party voters of the ward or precinct. Regular announced caucuses were held, which all voters of the party could attend.⁵ In the larger cities, a city-wide caucus of the members of a party for the selection of the party's candidates was impracticable. The number of persons would be too great to be accommodated in one building, and the merits of the competing candidates for the nomination could not be satisfactorily discussed. The delegate convention system developed to meet this situation. A caucus was still held in the ward or voting precinct, at which delegates to the city convention were selected. Candidates for ward offices, such as aldermen, continued to be selected by the caucus.

Though the caucus and the delegate convention continued to be used for making nominations for municipal office up to the beginning of the twentieth century, many evils developed. When

³ John Adams, *Works* (1850 ed.), vol. 2, p. 144, quoted in F. W. Dallinger, *op. cit.*, p. 9.

⁴ W. V. Wells, *Life of Samuel Adams*, vol. 1, p. 171, quoted in F. W. Dallinger, *op. cit.*, p. 9.

⁵ These primary meetings of voters are often known popularly and referred to in the statute books as primaries or primary elections. In New England and some western states the term caucus is still used; but in most states such a meeting came to be known as a primary, being a primary assembly of voters. It should not be confused with the "direct primary," in which the voters of a party go to the polls—the regular polling places—cast their votes by ballot, and nominate candidates for office.

the precinct or ward caucus no longer actually selected the candidates but merely selected delegates to a nominating convention, the voters became less interested. They failed to attend the caucus as regularly as they had when nominations were made directly. Political bosses or leaders stepped in and controlled the selection of delegates to the convention. This was accomplished in many cases through fraud and devious political practices. "Floaters" and "repeaters" drawn from the lowest elements of the population frequently dominated and terrorized caucuses. The type of meeting place selected and the likelihood of violence often kept the better class of voters away. The meeting place was often in or adjacent to a saloon, or over a livery stable. Of over 1000 caucuses and conventions held in New York City in 1884, two-thirds were held in saloons.⁶ Small rooms were selected for the meetings, and these were packed by henchmen of the ward boss so as to exclude the voters he did not control. In some cases the clock was turned an hour ahead, and the delegates to the convention were selected before the independent voters arrived. By the snap caucus the boss was assured of the selection of his slate of candidates.⁷

Conventions made up of delegates selected by boss-manipulated and -controlled caucuses could not be expected to select or nominate a high type of candidate. A convention held in Cook County, Illinois (Chicago), to nominate candidates for county offices indicates how bad conditions were in some cases:

Of the delegates, those who have been on trial for murder numbered 17; sentenced to the penitentiary for murder or manslaughter and served sentence, 7; served terms in the penitentiary for picking pockets, 2; served terms in the penitentiary for burglary, 36; served terms in the penitentiary for arson, 1; ex-Bridewell and jailbirds identified by detectives, 84; keepers of gambling houses, 7; keepers of houses of ill fame, 2; convicted of mayhem, 3; ex-prize fighters, 11; pool-room proprietors, 2; saloon keepers, 265; lawyers, 14; physicians, 3; grain dealers, 2; political employees, 148; hatter, 1; stationer, 1; contractors,

⁶ Theodore Roosevelt, "Machine Politics in New York City," 33 *Century* 74, 79 (Nov., 1886).

⁷ R. C. Brooks, *Political Parties and Electoral Problems*, p. 238. A New York politician is reported to have said: "It's great sport to see people go to the polls in hordes and vote like cattle for the ticket we prepare." D. D. Field, "The Primary the Pivot of Reform," 14 *Forum* 192 (Oct., 1892).

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4; grocer, 1; sign painter, 1; plumbers, 4; butcher, 1; druggist, 1; furniture supplies, 1; commission merchants, 2; ex-policemen, 15; dentist, 1; speculators, 2; justices of the peace, 3; ex-constable, 1; farmers, 6; undertakers, 3; no occupation, 71. Total delegates, 723.⁸

Candidates nominated under such a plan, as might be expected, were all too often the tools of a boss. The candidate who was nominated and elected to public office knew that he owed a debt of gratitude to the political boss. Realizing that the caucus and convention were dominated by irresponsible political leaders, the people demanded a change. To meet these demands, efforts were made to regulate by law the caucus and the convention. Statutes were passed aimed at the worst evils. Attempts were made to regulate the call of the caucus, the seating capacity of the hall, and methods of voting. The regulation or prohibition of proxy voting was provided in several states. Maine by act of 1887 provided for the punishment of anyone who "by rude or indecent behavior, or in any way wilfully or unlawfully disturbs or interrupts any public primary, political meeting, or caucus or convention . . . or creates a disturbance in any hall, walk, or corridor adjacent or leading to the room where such caucus or convention is held."⁹

Statutory regulation of the caucus and convention proved to be inadequate. Political leaders devised means of controlling the nominating procedure and at the same time staying within the law. Public opinion demanded greater popular control of the party system and of the nomination of candidates for public office. The result of this agitation was nomination by direct vote of the party voters—the direct primary.

DIRECT PRIMARY

Critics of the caucus and the convention system suggested that the way out of the difficulty of nominating candidates for public office was to provide that this be done directly by the voters. The

⁸ R. M. Easley, "The Sine Qua Non of Caucus Reform," 16 *Rev. of Revs.* 322 (Sept., 1897).

⁹ See C. E. Merriam and L. Overacker, *Primary Elections*, chaps. i-iv, for early legislative regulation of the caucus and convention.

late Senator La Follette of Wisconsin, arch enemy of bosses, as early as 1896 advocated the direct nomination of candidates on the same day for all parties, with the use of the Australian ballot. "Go back," he said, "to the first principles of democracy; go back to the people. Substitute for both caucus and convention a primary election—held under the sanction of laws which prevail at general elections—where the citizen may cast his vote directly to nominate the candidates of the party with which he affiliates and have it canvassed and returned just as he cast it."¹⁰ In 1903 Governor La Follette saw this principle enacted into law in Wisconsin. An election was to be held within the party for the selection of candidates for public office. This election or direct primary not only was regulated by law but was actually held under public auspices, at the same time and place for all parties, with an official ballot and public election officers conducting the election and counting the ballots. The spread of the direct primary has been rapid. By 1940 all the states except Connecticut and Rhode Island made provision for some use of the direct primary. New York, Maryland, and Indiana limit its use to local nominations, the convention still being used for state-wide officers. In 40 states the use of the direct primary is mandatory, and in six states its use is optional with the party committee. Some states make its use mandatory for some offices and either optional or inapplicable to others. The use of the direct primary is optional for all municipal offices in Florida and in any city or town in Massachusetts.¹¹

PARTISAN DIRECT PRIMARY

In the partisan direct primary, candidates for city offices are nominated by the voters of the party at a regular preliminary election which, as has been pointed out above, is conducted under public auspices. The ballots for the primary, or election within

¹⁰ R. M. La Follette, *Autobiography*, p. 197. For the use of the principle of the direct primary as early as 1842 in Crawford County, Pennsylvania, see R. C. Brooks, *op. cit.*, pp. 161-162.

¹¹ For the extent of the use of the direct primary and the scope of these laws, see C. E. Merriam and L. Overacker, *op. cit.*, pp. 93-94; E. M. Sait, *American Parties and Elections*, pp. 349-350; P. H. Odegard and E. A. Helms, *American Politics*, chap. xvi.

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the party, are printed at public expense.¹² The question arises as to how a person may get his name on the ballot in the primary election as a candidate for municipal office. He must file his name as a candidate with the appropriate election officer, usually the county or city clerk. In about one-half of the states the mere filing of a declaration of candidacy, with the additional requirement in some cases of the payment of a small fee, is sufficient. In the other states the candidate must file a petition signed by a given number or percentage of the party voters.

The names of the candidates are printed on the official ballot under the office for which they are candidates. Some states provide that the names be arranged in alphabetical order. Unquestionably there is a decided advantage for the candidate whose name stands at the top of the list. To meet this situation, several states provide that names be rotated in the printing of the ballots so that each name will appear first an equal number of times or in an equal number of precincts.¹³ Arrangement by lot or by the order of filing is also used.¹⁴

There are two types of direct primary, the open and the closed. In the open primary, which is now used in eight states, the voter receives the ballots of all parties, takes them into the voting booth, and marks the one of his choice. Three types of open primary ballot have developed.¹⁵ With the first type, now used in Michigan, Wisconsin, Montana, and Utah, the voter receives the ballots of all parties. He votes only one of the ballots, deposits it in the ballot box, and puts the other ballots in another box used for blank ballots. Three states—Minnesota, Idaho, and North Dakota—use a blanket or consolidated ballot which is similar to the party-column ballot used in general elections. The voter places a cross in the circle at the top of one party column and a cross in front of the particular candidates he wants to have nominated. He must vote

¹² In some southern states, such as Alabama, Mississippi, and Texas, the expense of the primary is imposed on the parties, and they in turn assess it upon the candidates. H. R. Bruce, *op. cit.*, p. 306.

¹³ F. E. Horack, "The Workings of the Direct Primary in Iowa," 106 *Annals of the American Academy of Political and Social Science* 148 (Mar., 1923).

¹⁴ C. E. Merriam and L. Overacker, *op. cit.*, pp. 79-80.

¹⁵ See Illinois Legislative Council, *The Direct Primary Ballot*, Research Report No. 60, July, 1940; E. M. Sait, *op. cit.*, pp. 501-502.

only for the candidates in one party column. Washington has no party column but arranges the names of all candidates under the office for which they seek nomination, with their party affiliations shown after their names. The voter, under the open primary as used in these eight states, does not disclose his party affiliation, the party with which he aligns himself in the primary.

The argument advanced in favor of the open primary is that it preserves the secrecy of the ballot, which is regarded as one method of checking intimidation and bribery. This is held to be a fundamental principle of the Australian ballot, and one that should be preserved. The open primary has not been widely adopted, however, on the ground that it makes possible invasions or raids on a party's primary. It is argued that a weaker party may participate in the primary of the stronger party to help nominate a weak candidate, who will be easier to defeat at the polls. Although the study made by Dr. A. B. Hall in Wisconsin in 1922 indicated that many Democrats voted in the Republican primaries,¹⁶ Chester H. Rowell came to the conclusion that "the Democrats do not invade the Republican primary to foist on the Republicans a weak candidate, in order to defeat him with the Democratic nominee. When they invade the Republican primary it is to vote for a strong candidate, whom they expect to support in the final election also; . . ."¹⁷

Under the closed primary, which is the prevailing type, an attempt is made to restrict voting in the primary to members of the party. The primary is thus closed to non-members of the party. If the primary is to be closed to non-members, some test must be devised to determine whether a person is a member of a party and consequently entitled to vote in its primary and help select its candidates. Several tests of party membership have been devised in an effort to meet this problem.

In states having the enrollment method a public record is made as to the voter's affiliations. This is usually done at the time of registration, but in some states it is done at the primary. Provision is made for changing one's party affiliation or allegiance at specified

¹⁶ A. B. Hall, "The Direct Primary and Party Responsibility in Wisconsin," 106 *Annals of the American Academy of Political and Social Science* 40 (March, 1923).

¹⁷ *Transactions of the Commonwealth Club of California*, vol. 19, p. 572 (Dec., 1924), quoted in E. M. Sait, *op. cit.*, p. 517.

times. In some states a voter must lose his vote in one primary before he can change his party affiliation. The challenge system of determining party membership is used in some states. Under this system a test of party membership is required; if challenged, the voter must swear that he meets the prescribed test. The test varies. He must swear that he is affiliated with the party; he must promise to support it in the next election; he must swear that he voted its ticket at the last election; and in some states he must swear that he voted its ticket in the last election and also that he intends to do so in the next election.¹⁸ In some states the determination of party membership for voting in primaries is left to the party committee. The states using this method are mostly in the South.¹⁹

When the polls close at the end of the day, the election judges proceed to count the vote and determine the nominee of each party. The candidate receiving the highest number of votes for each office becomes the party nominee for that office.²⁰ The names of the candidates nominated by the various parties are then submitted to the voters in the subsequent election to determine the choice for the office.

Conclusions on the Direct Primary

The direct primary as a means of nominating candidates for public office was evolved because of the evils of the convention system. As is the usual case with a new governmental device offered as a cure-all for political ills, all the advantages claimed have not materialized. Making the party candidate the direct nominee of the party voters, it was claimed, would break the power of bosses and machines. No longer would the organization select the party candidates, and no longer would the nominee, when he had been elected

¹⁸ For tests of party membership, see H. R. Bruce, *op. cit.*, pp. 301-302.

¹⁹ M. McClintock, "Party Affiliation Tests in Primary Election Laws," 16 *Am. Pol. Sci. Rev.* 465 (Aug., 1922).

²⁰ A run-off primary is used in several southern states if no candidate receives a majority. In many southern states the Democratic nomination is practically equivalent to election and the run-off primary is held to meet that situation. Several states have tried preferential voting in primaries but all have abandoned it. In Iowa and South Dakota, when candidates for Senator, Representative to Congress, or governor receive less than 35 per cent of the vote cast for these offices, the nominee is selected by the state convention from among the candidates in the primary.

to office, be subservient to the boss. More conservative advocates of the direct primary, such as Governor Hughes of New York, though feeling that it was an improvement over the convention system, believed that it had its limitations.

One of the criticisms of the direct primary is the added cost to the public and the candidates. It means another election; and an additional election in a city of 200,000 and over involves heavy expense, both to the city and to the candidates. To reach the voter in the two campaigns (primary and election), large sums of money must be spent. The wealthy candidate, or the candidate supported by wealth, has a distinct advantage under such a plan.²¹

The burden of the voter has been increased. Rather than simplifying the electoral process, as should be done and as is proposed in the short ballot, the voters' burden is made more complex.²² This complication of the electoral process offers new opportunities for the political leader or boss and makes his services more indispensable. Because of the multiplicity of elections and candidates the voter loses interest, and the politicians are able to nominate their candidates. The vote in the primary has been smaller than in elections, the primary vote generally being from 35 to 60 per cent of the regular election vote. However, in considering this aspect of the direct primary it should be pointed out that a comparison of the vote in the primary and in elections is somewhat unfair. A more significant comparison for purposes of evaluating the direct primary as a method of nominating candidates is between popular participation under the older methods of nomination—the caucus and the convention—and the direct primary. When such a comparison is made, the advantage is clearly with the direct primary.

One criticism which has been made of the direct primary is that it weakens party responsibility. According to this view, "We must restore to our political parties the right to select their own candidates" if we are to have efficient administration of popular govern-

²¹ Though not limited to campaigns for municipal office, see the following studies for this aspect of the direct primary: C. H. Wooddy, *The Chicago Primary of 1926*, pp. 255-263; C. H. Wooddy, *The Case of Frank L. Smith*, Appendix 1.

²² But Charles E. Hughes has said, "I regard a proper direct primary system as an essential complement of the short ballot." "The Fate of the Direct Primary," 10 *Nat. Mun. Rev.* 25 (Jan., 1921).

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ment.²³ There is some question, however, as to whether the direct primary has weakened party control over nominations. Professor Wooddy, in his study of the Chicago primary of 1926, pointed out that "the so-called party and factional machines have not disappeared." Professional control of the party process, he stated, was so effective in that primary that the "people," as such, had little if anything to do with the selection of the candidates. He summarized the situation as follows:

The nominating process, as it has developed in Cook County, has resolved itself into two distinct stages. These are: first, the selection by the rival party factions, of complete "slates" or tickets; second, a campaign of appeals to the electorate, in which each faction urges the choice of its entire slate. The second stage resembles, for each party, a miniature general election, though it is, of course, a ratification of the nominations offered by the factional group. What has occurred, however, is not that a new process of nomination has come into existence—one in which the voters participate directly—but that the old and familiar method of selection by interested groups is pushed back an additional stage by the interposition of the ratifying process.²⁴

He concluded that "the really significant part of the primary is not, paradoxically enough, the primary itself, but the selection of factional nominees which precedes it. . . . The real selection of candidates is done in the preprimary caucuses and conventions."

After fifty years of trial, the conclusion is the one reached in the case of most reforms. The direct primary has not come up to the promises of its most ardent advocates; neither has it brought the baneful results predicted by its opponents.²⁵ It is questionable whether there has been any improvement in the type of candidates nominated. The electorate has shown little discrimination in the nomination of candidates. "Democracy," said E. M. Sait, "does not encourage talent. At any rate, the people, having no

²³ Mayo Fesler, "The Primary or the Convention—Which?" 15 *Nat. Mun. Rev.* 523 (Sept., 1926).

²⁴ C. H. Wooddy, *The Chicago Primary of 1926*, pp. 38, 40, by permission of the University of Chicago Press. For a valuable evaluation of the direct primary, see *ibid.*, chap. xi.

²⁵ Professor Merriam, writing in 1909, said: "Some bosses are wondering why they feared the law [direct primary] and some reformers are wondering why they favored it."

intimate acquaintance with the politicians, are apt to judge them, not by character, but by showy and superficial qualities that disguise mediocrity. . . . The incompetence of the voter at the primary can hardly be disputed; the mere fact that it is considered necessary to rotate the names on the primary ballot establishes his incompetence."²⁶

Under the older systems of nomination, organization support was desirable if not essential for selection as a party nominee. Under the direct primary, this support is also desirable and probably no less essential. Machine or organization support in large cities is almost a necessity. Political leaders or bosses hold private conferences; they plan, they bargain, and they connive to secure the nomination of their candidates. In our large cities, the candidate who does not have organized support in the primary, which in most cases means the support of "the organization," has little chance of success.

Despite the failure of the direct primary to bring about the millennium in municipal politics, it is doubtful if the people could be persuaded to go back to the convention system. They feel that in the direct primary they have a weapon which can be used if needed. Knowing that the people have this weapon, party leaders may be more careful and cautious in the candidates they support. The fact that the voters have this weapon is advantageous in that it gives them a consciousness of power and responsibility.²⁷

The direct primary is in a sense a shotgun over the door of the municipal electorate. Such a weapon need seldom be used. As long as the party organization presents satisfactory candidates, there is no serious objection to the fact that they are "organization candidates." If the organization falls to the level that it did in some cases under the convention, then the voters have an effective weapon in the direct primary. "Oligarchy," says Sait, "still rules in politics; and the direct primary simply offers a means of interrupting its operations when they conflict with the public interest or popular aspirations and engender resentment."²⁸

²⁶ E. M. Sait, *op. cit.*, p. 520.

²⁷ For a discussion of this advantage of the direct primary, see Charles Evans Hughes, *op. cit.*

²⁸ E. M. Sait, *op. cit.*, p. 527.

NON-PARTISAN PRIMARY

The non-partisan primary is used in many states for the selection of city officers.²⁹ The names of candidates, which are placed on the ballot by petition, appear with no party designation of any kind. The two persons having the highest number of votes for each office are nominated for that office. Their names appear upon the ballot without any party designation. A non-partisan primary is thus followed by a non-partisan election.

The run-off election has been eliminated in some cases. In California, when one candidate receives at the primary a majority of the votes cast for the office he is seeking, he is declared elected. Thus in the June, 1933, primary in Los Angeles, four candidates for the city council received majorities in the primary and were declared elected. When no candidate received this majority, the two high candidates entered the run-off election. In Chicago, where the 50 aldermen are elected by wards on a non-partisan basis, the candidates receiving a clear majority in the primary are declared elected and the run-off election is eliminated. In the 1933 primary, for example, 45 aldermanic candidates received a majority of all the votes cast in their ward and were declared elected; in the other five wards a run-off election was held, the names of the two candidates receiving the highest vote in the primary appearing on the ballot.

The non-partisan movement, which originated in cities, had as its object the waging of elections on municipal rather than on state and national issues. This was accomplished in part by holding city elections on a separate date from state and national elections. The use of the non-partisan ballot seeks to carry this principle still further. "The real issues in municipal elections," says Robert E. Cushman, "are in the main issues of administrative efficiency rather than issues of policy upon which political parties might be expected to differ. It has seemed desirable, therefore, to rule out

²⁹ The non-partisan primary is also used for county, school, and other local officers, especially judges, in many states; and Minnesota and Nebraska use it for members of the legislature.

partisanship from the field of city politics as an irrelevant hindrance to business-like administration."³⁰

The non-partisan system of municipal elections is usually found in cities with home-rule charters; in several states it is provided by state law for cities of certain classes, and a few states provide it for all cities. Laws providing for the commission and council-manager plans of government generally provide for a non-partisan system of elections. A recent study of the 2033 cities of over 5000 population showed that non-partisan elections were used to select members of the council in 43.6 per cent of the mayor and council cities, 76 per cent of the commission-governed cities, and 83.5 per cent of those operating under the council-manager plan.³¹ Among the larger cities having non-partisan elections are Boston, Detroit, Los Angeles, Milwaukee, Minneapolis, Kansas City, and Chicago for members of the city council.

NOMINATION BY PETITION

A few cities provide for the nomination of candidates by petition.³² Under this plan a person presents his petition to the proper authority, usually the city clerk, and his name appears upon the election ballot. Under this system, municipal officers are selected at one election, eliminating the primary election.

The requirement of a large number of signers for petitions was intended to cut down the number of candidates. In this way it was hoped to prevent scattering the vote among several candidates, and the resulting election by a plurality rather than a majority. Nomination by petition, however, often results in plurality candidates being elected. In Boston, 3000 signatures to a nominating petition are required for the office of mayor, and 300 for members

³⁰ R. E. Cushman, "Non-Partisan Nominations and Elections," 106 *Annals of the American Academy of Political and Social Science* 83 (Mar., 1923). For further discussion of partisanship in city elections and whether the non-partisan system really produces non-partisanship, see chap. xxii.

³¹ *Municipal Year Book*, 1946, p. 46. Also see *The Form of Government in 288 American Cities*, published by the Detroit Bureau of Governmental Research, 1931.

³² This should not be confused with the requirement of a specified number of signers to a petition to enable a person to become a candidate for nomination under the partisan or non-partisan direct primary.

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of the council. In the Boston mayoralty election of 1925 the winning candidate received 48,448 votes out of a total of 144,456 votes cast. In the election of members of the city council in November, 1931, 13 of the 22 councilmen elected had only a plurality of votes in their ward. In the fourteenth ward, for example, where 10,723 votes were cast, the winning candidate received 3289 votes. Although 3289 voters favored the candidate elected, over 7000 voters expressed a preference for other candidates. At the 1939 election, 12 of the 22 councilmen elected received pluralities. In the first ward the candidate elected received 3466 votes; the total received by his opponents was 10,051 votes. These results illustrate the chief defect of nomination by petition—the election of officeholders by a plurality rather than by a majority.

The requirement of a large number of signers to nominating petitions has not proved to be a satisfactory manner of eliminating candidates. Persons can be hired to secure signatures on such petitions, usually at the rate of four or five cents per name. Another way of reducing the number of candidates would be to require a large filing fee which would be returned after the election if a candidate received a stated percentage of the total vote.³³ In England a candidate for Parliament is required to deposit £150, which is forfeited if he does not poll more than one-eighth of the total vote. Parliamentary candidates in Canada deposit \$200, which they lose if they do not poll one-half as many votes as the successful candidate.

The system of fees was provided in Wayne County and Detroit, Michigan, in 1935 as a means of reducing the number of candidates in the primary.³⁴ A state law applicable to all county officers and the state legislature in counties of over 500,000 population places the fee at \$50 if the salary for the full term of office sought is \$3000 or less, and at \$100 if the salary for the full term is over \$3000. To penalize frivolous candidatures, the law provides that

³³ H. G. James takes the view that there should be no restrictions and that any qualified elector should be permitted to become a candidate. Nomination would then cease to be an honor and only those persons with a real chance of election would become candidates. H. G. James, *Applied City Government*, pp. 11-12.

³⁴ Harold M. Dorr, "Tightening the Direct Primary," 30 *Am. Pol. Sci. Rev.* 512 (June, 1936); 31 *ibid.* 56 (Feb., 1937).

if a candidate at any primary election is nominated, or if he receives 50 per cent of the total vote received by the winning candidate, the deposit is returned. In the same year the voters of Detroit approved a charter amendment eliminating signature petitions as a means of qualifying for a place on the ballot in primaries of that city. The fee is placed at \$100 for salaried offices and at \$50 if no salary is attached to the office. Deposits are returned to all successful candidates, and to those who receive a number of votes equal to not less than 50 per cent of the total vote cast for the successful nominee receiving the lowest number of votes for any office. The deposits of all other defeated candidates are forfeited. The experience in Detroit has not been encouraging as to the effectiveness of these provisions in reducing the number of candidates. The weakness would appear to be that the fee is too small and the provision for refund is too liberal. Further experimentation with deposits which are returned to candidates who receive a reasonably large vote may be expected in the future.

PREFERENTIAL VOTING³⁵

The obvious advantage of nomination by petition is the elimination of the primary. The disadvantage, as has been pointed out, is that plurality rather than majority candidates are too often selected. Preferential voting has been offered as a method of eliminating the primary and at the same time securing majority candidates. It will accomplish at one election all that is achieved in two elections under the run-off primary plan.

Preferential voting is based on the principle that when the voter votes in a primary and then in an election, he expresses only two choices. At the primary he designates his first choice. Suppose that under the non-partisan system he votes for A for mayor, but that A is defeated in the primary. At the election he will merely express his choice among those nominated. If it is B and C, then he will express his choice between the two; if D and F are nominated, he will do the same, that is, indicate which of the two he prefers.

³⁵ *Mass. Const. Conv. Bulletins* 1917-1918, vol. 2, no. 27, pp. 303-319; Mayo Fesler, "The Preferential Non-Partisan Ballot," *Proc. Third Annual Conv. of Ill. Mun. League*, 1916, p. 25.

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Instead of asking the voter to vote at a subsequent election, why may we not permit him, ask the advocates of preferential voting, to express these preferences at one election? In effect they would say to the voter: If A is not one of the two high candidates in the primary, who will be your choice in the election? He may say D. But there is no assurance that D will be one of the two highest candidates, and under the non-partisan run-off plan his name would not appear on the ballot. The two high candidates may be the voter's fifth and sixth choices. But if they were the two high candidates in the primary, the voter would come back at the election and vote for his fifth choice, C, rather than F who is his sixth choice.

Preferential voting provides that the voter be asked to indicate all his choices at one election rather than being asked to come back to the polls at a subsequent time for this purpose. The plan eliminates the second election. By the use of his second and other choices as expressed in his one trip to the polls, it will be possible to secure a majority choice, avoiding plurality elections which are the chief weakness of the petition system of nomination.

The Bucklin or Grand Junction system of preferential voting was first used in Grand Junction, Colorado, in 1909. The plan spread to several other cities in this country for the election of city councils or commissions on the principle of the block vote, and also of single officers. The use of the ballot where a single officer is to be elected is shown below.

| <i>Candidates</i> | <i>First Choice</i> | <i>Second Choice</i> | <i>Other Choices</i> |
|-------------------|-------------------------|--------------------------|--------------------------|
| A | X | | |
| B | | X | |
| C | | | X |
| D | | | X |
| E | | | |
| F | | | X |
| G | | | |
| H | | | X |

The voter indicates by crosses in the proper columns his first, second, and other choices. The ballots are counted; and if any

candidate has a majority of first choices, he is declared elected. If no one has a majority, the second choices are then added to the total of his first choices; if any candidate now has a majority of first and second choices, he is declared elected. If no one is yet elected, other choices are counted and added to the first- and second-choice totals. If any candidate now has a majority of first, second, and other choices he is declared elected; if there is no candidate with such a majority, the high candidate is declared elected.

The result of the first election in Grand Junction for mayor shows the way in which the Bucklin plan operates.³⁶

| <i>For Commissioner of Public Affairs</i> | <i>First Choice</i> | <i>Second Choice</i> | <i>Other Choices</i> | <i>Combined Firsts and Seconds</i> | <i>Combined Firsts, Seconds, Others</i> |
|---|-------------------------|--------------------------|--------------------------|--|---|
| D. W. Aupperle | 465 | 143 | 145 | 608 | 753 |
| W. H. Bannister | 603 | 93 | 43 | 696 | 739 |
| N. A. Lough | 99 | 231 | 328 | 330 | 658 |
| E. R. Lutes | 41 | 114 | 88 | 155 | 243 |
| E. M. Slocumb | 229 | 357 | 326 | 586 | 912 |
| T. M. Todd (elected) | 362 | 293 | 396 | 655 | 1051 |

The chief weakness of this system of preferential voting is that a voter's second and other choices really work against the election of his first choice. In the election for mayor of Cleveland in 1915, which was held under the Bucklin system, many people thought that Peter Witt, who led on the count of first choices, was defeated partly by the second choices of his own supporters.³⁷ In the Grand Junction election results given above, unquestionably D. W. Aupperle was defeated in part by the second choices of his own supporters for candidate Todd, who was elected. If the supporters of a candidate vote only their first choices for him and give no second choices to other candidates, it will be to his advantage. He would probably receive some second- and third-choice votes from first-choice supporters of other candidates. Those who voted these

³⁶ R. G. Mott, "Preferential Voting and How It Works," 1 *Nat. Mun. Rev.* 386 (July, 1912); L. J. Johnson, "Preferential Voting," 3 *ibid.* 83 (Jan., 1914).

³⁷ C. G. Hoag and G. H. Hallett, *Proportional Representation*, p. 489.

second choices would in effect be voting against their first choice.

Voters and candidates soon learn this fact and fail to vote other than first choices. In the 1921 election in Cleveland only 28 per cent of the voters marked second choices for mayor, and only 18 per cent for councilmen. In discussing the use of the preferential ballot in Cleveland, Chester C. Maxey has said: "It was discovered that the preferential-choice scheme would be turned to the advantage of the party passing out the word to all regulars to vote only for a first choice. Thus the alternative votes of the independent voters would tend to build up the aggregate vote of the party candidate, but the regular party voters would contribute nothing to the aggregate of the independent candidates."³⁸ In the first election in San Francisco under the Bucklin system of preferential voting, the number of second choices marked was less than 3 per cent of the number of first choices. When voters fail to indicate their second and other choices, preferential voting operates the same as the system of nomination by petition, with the resulting plurality elections. This may be seen in the Cleveland council election of 1921, in which the candidates who led on first choices were elected in every ward, 18 of the 32 being elected by less than half the ward's voters, even after second and third choices had been counted.³⁹ In order to avoid plurality or minority nominations, the Oklahoma law of 1925 providing for a preferential system of voting in the primary declared a ballot to be void if the voter did not indicate his second and third choices. The Supreme Court of Oklahoma declared the law unconstitutional on the grounds that the voter was denied the free exercise of the right of suffrage. According to the court, the voter was told that unless he voted for one or two who were not his choice, his first choice would not be counted.⁴⁰

Another weakness of the Bucklin system is that a second or third choice is given equal weight with a first choice. The Nanson system of preferential voting seeks to remedy this weakness by weighting choices. A second choice would be equal to only one-half of a first

³⁸ C. C. Maxey, "The Cleveland Election and the New Charter," 16 *Am. Pol. Sci. Rev.* 83 (Feb., 1922).

³⁹ C. G. Hoag and G. H. Hallett, *op. cit.*, p. 489.

⁴⁰ *Dove v. Oglesby*, 114 Okla. 144, 244 Pac. 789 (1926).

choice, and a third choice to only one-third of a first. This system has been used in Marquette, Michigan.⁴¹

The Ware or alternative vote system is the most satisfactory plan of preferential voting yet devised. Under this system, the voter indicates his first, second, and third choices. Ballots are then counted and placed in piles according to first choices. If any candidate has a majority of the first choices of the total vote cast, he is declared elected. If no candidate has a majority, the candidate with the smallest number of first choices is dropped from the counting and his ballots are transferred to other candidates according to the second choice indicated. The totals are then added; and if any candidate has a majority, he is declared elected. If no candidate yet has a majority, the low candidate among those remaining is dropped and his votes are transferred to the next choice. This process continues until some candidate receives a majority. The working of the Ware system of preferential voting is indicated by the following:

| | <i>Transfer</i> | | | <i>Transfer</i> | | <i>Transfer</i> | |
|------------------|---------------------|---|-------------------|--|-------------------|---|---------------------|
| <i>For Mayor</i> | <i>First Choice</i> | <i>of E's Votes</i> | <i>New Totals</i> | <i>of D's Votes</i> | <i>New Totals</i> | <i>of C's Votes</i> | <i>New Totals</i> |
| A | 8,000 | 800 | 8800 | 1800 | 10,600 | 3150 | 13,750 ^a |
| B | 6,500 | 1000 | 7500 | 1450 | 8,950 | 2300 | 11,250 |
| C | 4,000 | 700 | 4700 | 750 | 5,450 | Third to be dropped and vote transferred. | |
| D | 3,500 | 500 | 4000 | Second to be dropped and vote transferred. | | | |
| E | 3,000 | First dropped as lowest number first choices. | | | | | |
| Total | 25,000 | | | | | | |
| Majority | 12,501 | | | | | | |

^a A is elected, 13,750 being a majority of 25,000.

The Ware system seems to accomplish in a satisfactory manner the election of majority candidates without the use of the primary as an eliminating process.

⁴¹ C. G. Haines and B. M. Haines, *Principles and Problems of Government*, 2nd ed., p. 162; R. C. Brooks, *op. cit.*, p. 445. This system was devised by Professor E. J. Nanson of the University of Melbourne, Australia.

After its adoption in Grand Junction in 1909, preferential voting spread to other American cities. By 1919, 55 cities were using the preferential ballot. After that time the spread was less rapid, the number of cities using it never going much beyond 100. In recent years there has been an actual decrease in the number of cities using preferential voting. Grand Junction, where the plan originated, is among the cities which have abandoned it. In 1923, Cleveland abandoned it and adopted proportional representation.⁴² Among the larger cities which adopted preferential voting were Cleveland and Columbus in Ohio; Denver, Colorado; Portland, Oregon; Spokane, Washington; San Francisco, California; and Duluth, Minnesota. Over 30 cities in New Jersey adopted it, including Paterson, Newark, Atlantic City, Hoboken, and Jersey City.

Preferential voting has been tried (and abandoned) in ten states to avoid plurality nominations in the direct primary. The general result of its use was that voters failed to indicate more than one choice. Obviously if the voters failed to vote their second and third choices the system was of no value. It became preferential voting in form only. Some of the states, especially in the South where the Democratic nomination is especially important, being equivalent in most cases to election, have abandoned preferential voting for the "run-off" or second primary.⁴³

The constitutionality of preferential voting has been attacked on the ground that when the state constitution grants the right to vote at elections it means one vote and not two or three. In holding unconstitutional the provisions of the Duluth charter providing for preferential voting, the Supreme Court of Minnesota said:

When the constitution was framed, as used in it, the word "vote" meant a choice. Since then it has meant nothing else. It was never meant that the ballot of one elector cast for one candidate could be of greater or less effect than the ballot of another elector cast for another candidate. It was to be of the same effect. It was never thought that with four candidates one elector could vote for the candidate of his choice, and another elector could vote for three candidates against him. The prefer-

⁴² This system was later abandoned, along with the council-manager plan.

⁴³ Maryland still retains preferential voting in the primary.

ential system diminishes the right of an elector to give an effective vote for the candidate of his choice.⁴⁴

A different view, however, has been taken by the highest courts of New Jersey and Washington. The New Jersey court held that under preferential voting a voter does not cast a vote for two persons for the same office in violation of any implied prohibition of the constitution on the subject. In Washington it was held that the legislature might devise an election system to avoid plurality elections. As it might have provided a second primary, it might compel the elector to vote a second choice to be used in determining the results.⁴⁵

PROPORTIONAL REPRESENTATION

Nomination and election are also combined in one election in proportional representation as in preferential voting. This method has been discussed earlier in connection with the election of members of city councils.⁴⁶

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⁴⁴ *Brown v. Smallwood*, 130 Minn. 492, 153 N.W. 953 (1915).

⁴⁵ *Orpen v. Watson*, 87 N.J.L. Rep. 69, 93 Atl. 853 (1915); *State v. Nichols*, 50 Wash. 508, 97 Pac. 728 (1908). Also see William Anderson, "The Constitutionality of Proportional Representation," 12 *Nat. Mun. Rev. Supp.* 743 (Dec., 1923).

⁴⁶ See chap. xii.

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Conduct of Elections

While attention has been directed to many fields of municipal administration in recent years, leading to such reforms as the commission and council-manager forms of government, improved budgetary practices, centralized purchasing, and civil service reform, little attention has been given to the administration of elections.¹ The result, says Joseph P. Harris, is that "probably no other phase of public administration is so badly managed."² A study made a few years ago in Ohio stated that election administration in that state was "wasteful and excessively expensive, particularly in the big urban counties."³

The cost of conducting elections in cities justifies more consideration being given this phase of public administration. The cost per vote in New York City in 1930 was \$1.38; in Buffalo, \$1.45; and in Rochester, \$1.57.⁴ The conduct of elections in Ohio in 1930 cost 91 cents per vote cast in the state. But in the eight large counties, expenditures ranged from \$1.01 to \$1.42 per vote cast.⁵ The average expenditure per vote cast during the four years 1926-29 inclusive, was 81 cents in Detroit, 72 cents in St. Louis, 51 cents in Mil-

¹ The term elections, as used in this chapter, is not limited to elections for the selection of city officers, but includes all elections within the city, whether for the selection of municipal, county, state, or national officers.

² J. P. Harris, *Election Administration in the United States*, p. 3.

³ *Election Costs in Ohio and How They Can Be Reduced*, published by The Ohio Institute, Columbus, 1931.

⁴ H. R. Goslee, *Election Administration in New York State Cities*, Publication No. 10, New York State Conference of Mayors and Other Municipal Officials, 1931. These figures include both city and county charges for conducting elections in the city. In New York City, however, there are no county election expenses, all costs being borne by the city. These figures include primaries and registration.

⁵ *Election Costs in Ohio*. These figures also include registration and primaries.

waukee, 36 cents in Minneapolis, and 62 cents in Omaha.⁶ "Taken by and large, the average cost per vote cast approximates one dollar."⁷

In discussing the registration of voters in an earlier chapter, it was pointed out that the city or town is the unit of election administration in New England; the county is the unit in about 20 states; and in several states the county is the unit, but large cities have control of election administration within their boundaries.

Except in the cities where a special election office has been established, the city or county clerk has charge of election administration. The precinct officers for the conduct of elections are generally selected by the county board or the city council. In the more populous counties and cities a special board of election commissioners is often provided. In nine states, county boards of elections or registration are provided throughout the state, and three states provide for city boards in all cities for the control of elections.⁸ Election boards usually have three to five members, the number being three in Chicago, Milwaukee, and Denver; four in New York City, Boston, Baltimore, Pittsburgh, Cleveland, Cincinnati, St. Louis, and Kansas City; and five in Philadelphia and San Francisco. The members of these boards are appointed by the mayor in Boston, Milwaukee, and San Francisco; by the aldermen in New York City; by the governor in Philadelphia, Baltimore, Pittsburgh, and St. Louis; by the secretary of state in Cleveland and Cincinnati; and by the county judge in Chicago. A single commissioner is sometimes placed in charge of elections, as in Los Angeles, Omaha⁹ and Rochester.

⁶ *Ibid.*

⁷ Report of Commission on Election Administration, "A Model Election Administration System," 19 *Nat. Mun. Rev.* 629 (Sept., 1930).

⁸ J. P. Harris, *op. cit.*, p. 123.

⁹ The single commissioner in Omaha is appointed by the governor. The suggestion has been made that the state should exercise a greater degree of supervision and control over local registration and election procedure. It is pointed out that the same voting list and the same election officers are used in state as in municipal elections. However, election administration, including registration, remains largely decentralized, with little state control. For the fact that state appointment of local election officers does not guarantee honest elections, see R. O. Huus and D. I. Cline, "Election Frauds and Councilmanic Scandals Stir Cleveland," 18 *Nat. Mun. Rev.* 289 (May, 1929). It should be pointed out that while the secretary of state appoints the board of elections in

In 1940, Louisiana and New Jersey provided for a greater degree of state supervision over local election administration in their larger cities. A Republican legislature in New Jersey passed a law providing that in the two most populous counties in the state a superintendent of elections should be appointed by the legislature. The act was vetoed by the governor but was passed over his veto. This legislation appears to have been directed especially at Jersey City. In Louisiana, a new registration law provided that the registrar in New Orleans be appointed by the governor.

In Detroit the city clerk, the president of the common council, and one judge of the recorder's court constitute the election board; the election commissioner of Rochester is appointed by a board consisting of the county judge, the special county judge, and the surrogate; and in Denver the election board consists of two popularly elected members, and the city clerk, who is appointed by the mayor. The city clerk is ex officio election commissioner in Minneapolis, St. Paul, and Des Moines.¹⁰

The term of members of election boards, or of commissioners where there is a single member,¹¹ is two years in New York City, Baltimore, Detroit, and Omaha; three years in Milwaukee; and four years in Boston, Rochester, Philadelphia, Pittsburgh, Cleveland, Cincinnati, Chicago, St. Louis, Denver, and San Francisco.

For the conduct of elections, cities are divided into precincts or districts. This is generally done by the county board, the city council, or the election board. The maximum size of election dis-

Cleveland, he is required by law to appoint persons recommended by local party organizations unless he finds that they are clearly unfit, in which case other names are submitted by the local organization.

¹⁰ See table in Report of Committee on Election Administration of the National Municipal League, published in 16 *Nat. Mun. Rev.* 54 (Jan., 1927); *Registration and Election in Six Cities* (Kansas City, Milwaukee, Minneapolis, St. Paul, Omaha, and Des Moines).

¹¹ The Committee on Election Administration of the National Municipal League opposed the use of boards in election administration except in the largest cities. In counties and cities of over 200,000 population the committee favored a single commissioner having charge of elections, with power to provide ballots, to appoint precinct election officers, and to supervise the conduct of elections. Where the population of a city is less than 200,000, the committee recommended that the administration of elections be entrusted to regular officers of the city or county. 19 *Nat. Mun. Rev.* 634. Also see 10 *ibid.* 603 (Dec. 1921).

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tricts is usually limited by statute to 400 or 500 voters.¹² The minimum rather than the maximum size of the precinct should be given more consideration. Many precincts are too small.¹³ The small precinct and the small vote per precinct are an important factor in adding to the cost of elections per vote cast. According to a study of election administration in New York, "A high average vote per district is the real secret of economical election administration, as shown by the fact that the average cost per vote is only \$.58 for the cities which have a vote per district of 500 or over, whereas in the sixteen cities whose average districts contain less than 380 voters, the average annual cost per vote was \$.93."¹⁴

Polling places must be selected in each precinct by the election authorities. Public buildings—schools, fire houses, and police stations—are favored for this purpose by most authorities on election administration. Such places, it is said, will improve the tone of elections and also lower the expense. Rented quarters, however, are often used. This has served as a type of spoils to be used by the political organization in rewarding party workers. Portable buildings are now rather widely used in some cities, among them Buffalo and Rochester.

In each election district or precinct there is a board for conducting elections. These boards vary in size from three to ten, the usual number ranging from five to seven. They are usually composed of three or four judges or inspectors and two or three clerks. When we consider that the number of election precincts in New York City runs over 3000 and the number of election officers over 18,000, we can see the problem involved in election administration. In Chicago there are approximately 12,000 election officers, in Cleveland over 4000, and in St. Louis over 3500.

Precinct election officers are generally selected by the local election authorities—the county board, city council, or election board.¹⁵

¹² The maximum number of voters per precinct varies from 200 in California to 2000 in Massachusetts.

¹³ In Canada voting districts often contain 3000 registered voters. 19 *Nat. Mun. Rev.* 631 (Sept., 1930).

¹⁴ H. R. Goslee, *op. cit.*

¹⁵ The clerk of the district court in Nebraska appoints these officers unless there is a county board of elections. In Oregon appointment is made by the judge of the county court.

In Philadelphia and Pittsburgh they are elected by the people. Residence in the precinct is often required, but this is not necessary in New York City, Detroit, Milwaukee, St. Louis, and Omaha. The law in several states provides that each of the two dominant parties must be represented. If there are three judges, not more than two of them can belong to the same party. If the board is composed of an even number of inspectors, the membership is equally divided. It is generally provided that the chairman of the party committee for the county shall submit a list of nominees for each precinct from which appointment must be made. Even where the law does not require appointments from such lists, in actual practice ward and precinct committeemen are consulted by the appointing authority. Election offices go to faithful party workers.¹⁶

The theory behind bipartisan election boards is that they aid in promoting honest elections—partisan watching partisan, or crook watching crook. Partisan affiliation is sufficient qualification, it is said, since loyalty to his party will be the worker's inducement to pay strict attention to his duties to prevent either mistakes or fraud at his party's expense. In practice it has not secured the desired result. Being political officers, holding their places because of the support of party leaders, election officers have too often used their positions for partisan purposes. In many cases this has extended to connivance at fraudulent voting.

An effort has been made in some states and cities to improve the caliber of election inspectors. Baltimore, St. Louis, and Kansas City have selected election officers without consideration of their political affiliations or residence within the precinct. Detroit, Buffalo, Rochester, San Francisco, and New Orleans have no local residence requirements but they attempt to secure election officers who reside in the precinct in which they serve.¹⁷ Occupation, penmanship, personal appearance, and standing in the city are used as the bases of selection.

The statutes in several states provide that precinct election officials must be of good character and of proved integrity, or com-

¹⁶ An interesting exception to the bipartisan arrangement for election boards is found in Detroit, where the three inspectors are chosen by lot without any regard to their party affiliation.

¹⁷ M. H. Shusterman, "Choosing Election Officers," 29 *Nat. Mun. Rev.* 185 (Mar., 1940).

etent and trustworthy. Such general qualifications mean little in actual practice. Some states have attempted to provide more definite tests. In New York, where the law requires inspectors to have a general knowledge of the duties of their office, written examinations are given in cities by the board of elections to determine whether a prospective election officer has this "general knowledge." But in reality it seems as if these examinations have been of little value. Partisan influence has defeated the law, the "right" candidates being given lists of answers by the same official who hands them the examination paper.¹⁸ In a recent investigation of election administration in New York City, what was considered a fair and honest examination was given to 1790 persons who had served as inspectors, and only 220, or 12.3 per cent, made the passing grade of 60.¹⁹

A few states have used the merit system to select election officials. New Jersey, by act of 1911, provided that the civil service commission examine candidates recommended by party chairmen as election officers to determine their ability and knowledge of the election law. This law has since been repealed. In 1937, Milwaukee adopted a system for selecting election officers which has proved highly successful. The election commission in that year requested the civil service commission to hold examinations to fill vacancies in precinct election offices. Minnesota in 1939 passed an optional state law providing for the appointment of election officers in cities of the first class from civil service lists. St. Paul and Duluth have already acted under the statute and adopted merit examinations for precinct election officers. After a two-year study of election administration in New York City, the Commissioner of Investigation in a report published in 1940 recommended that the entire election force in that city be placed under the civil service.

The need for honesty, efficiency, and economy in the conduct of elections is obvious. That the personnel selected for this work has in many cases been unsatisfactory is generally accepted. Joseph P. Harris has expressed the opinion that "the use of simple examina-

¹⁸ Report of the Commissioner of Accounts, Sept. 4, 1915, quoted in E. M. Sait, *American Parties and Elections*, p. 586.

¹⁹ New York City Department of Investigation, *Administration of the Election Law in New York City* (1940), p. 32.

tions, conducted by the city Civil Service Commission for the selection of precinct officers, is the most important development in election administration for many years and one which is probably destined to be adopted widely and to bring about great improvement in the conduct of elections in our large cities."²⁰

The Committee on Election Administration of the National Municipal League favored placing the power of appointing precinct election officers in the hands of a single officer. In larger cities it would be the election commissioner; in cities of medium size (10,000 to 200,000) it would be the city clerk; and in small cities and villages and the rural areas it would be the county clerk or county auditor. If the appointing authority would then adopt the practice followed in Baltimore, St. Louis, and Kansas City in selecting precinct officers without consideration of their political affiliations, an important step would be taken in improving election administration.

The conduct of the election in each precinct is in the hands of the election judges and clerks. The polls usually open at six or seven o'clock in the morning and close at five or six o'clock in the afternoon. Party watchers are present during the election. The law permits such watchers to be present to represent both the parties and the candidates. These watchers may challenge the right of any person to vote. If the challenged voter swears that he is entitled to vote, he is usually permitted to do so. A few states provide a means of identifying a challenged ballot so that it may be destroyed in case it is later found that the voter is not legally qualified. In some states the election board may deny the right to vote to a challenged voter.

When the polls close, the election officers proceed to count the ballots and determine the results. Since they have already served for ten or twelve hours conducting the election, this means an unreasonable burden on them. Double election boards have now been established in several states to meet this situation.²¹ One board conducts the election and the other counts the ballots. The counting board does not go on duty until two to five hours before the polls close. The counting is done in another room; as a box is counted it is exchanged

²⁰ *Municipal Year Book*, 1940, p. 509.

²¹ See Lucile McCarthy, "Counting Votes Before the Polls Are Closed," 19 *Am. Pol. Sci. Rev.* 784 (Nov., 1925).

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for another in the voting room. Among the cities using separate counting boards are Omaha, Denver, Salt Lake City, and Portland (Ore.). In San Francisco the ballot boxes were formerly taken from the precinct and a central count was made, but this plan was later abandoned. Under a law of 1921, a central counting system may be used by any county, or any city and county, in California. In cities using proportional representation, a central count system is used, either for the whole city or for large districts.

As a result of election frauds in the primary count of 1938 in Indiana, an act was passed requiring all counties having within their borders cities of the first or second class to tabulate their votes by means of a central count. The ballot boxes are to be sealed when the polls close, and brought to a central point within the county for tabulation by fresh workers who have had special training. The duties of the persons who conduct the election end with the closing of the polls. The new plan was used in the election of 1940; and although defects appeared in the administration of the law, a recent appraisal holds that "it is an improvement over the old method of district counting."²² The cost per vote was less than in the 1938 election when the precinct system of counting was used.²³

The cost of registering voters and conducting elections is generally borne by the local governments. The state is interested in the honesty and efficiency with which elections are conducted; and since the requirements as to the way in which the election shall be conducted, such as size of precinct and number and pay of election officers, are prescribed by state law, a strong case for the state to pay part of the cost can be made. This principle is found in a law of 1940 in Louisiana which provides that the state and the local government shall each pay one-half of the cost of voting machines.

DATE OF MUNICIPAL ELECTIONS

Though in the colonial period and for some time thereafter borough and city elections were held on different dates than colonial and state elections, there gradually developed the practice of holding

²² J. K. Eads, "Indiana Experiments with Central Ballot Count," 29 *Nat. Mun. Rev.* 545 (Aug., 1940).

²³ *Municipal Year Book*, 1941, p. 534.

all elections on the same day. Several factors account for this change. While the qualifications for voting in the two classes of elections differed in the earlier period, these distinctions were gradually abandoned. It was more advantageous for the party leaders to have all elections on the same day, and they were probably influential in bringing about the change.²⁴

During the last forty years, however, there has been a movement in the other direction. Although there are exceptions, the general practice is to separate the dates of municipal and of state and national elections. This should be done in all cases. Otherwise, the outcome of a local election will all too often depend upon the popularity of the party's candidate for President or governor. The tariff or the side on which one's grandfather fought in the Civil War should have nothing to do with the outcome of a municipal election. In the constitutional convention of 1894 in New York, Joseph H. Choate, speaking in behalf of the amendment to hold separate municipal elections in odd-numbered years, said: "There is no reason why a man should be mayor of New York simply because he is a Republican or because he is a Democrat, or that any other municipal office should be filled by this man or the other because he belongs to one national party or the other. The questions of national and state politics have nothing to do with the honest, expedient, and prudent administration of municipal affairs."²⁵ Separating the dates of municipal and of state and national elections is a step in the direction of eliminating these irrelevant factors from municipal campaigns. The separation of state and municipal elections may aid in bringing about the waging of municipal campaigns on the merits of the local candidates and issues.²⁶

Separating the two dates supports the short-ballot principle that "very few officers should be filled by election at any one time, so as to permit adequate and unconfused examination of the candidates." The burden placed on the voter at any one election is lessened by

²⁴ William Anderson, *American City Government*, p. 251.

²⁵ Quoted in Charles Evans Hughes, *Conditions of Progress in Democratic Government*, p. 133.

²⁶ On the effectiveness of the separation of state and municipal elections, see T. R. White, "Separation of Elections," and R. L. Gay, "Separation of Elections," in *Proc. Natl. Conf. for Good City Govt.*, 1907, pp. 209, 215.

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for another in the voting room. Among the cities using separate counting boards are Omaha, Denver, Salt Lake City, and Portland (Ore.). In San Francisco the ballot boxes were formerly taken from the precinct and a central count was made, but this plan was later abandoned. Under a law of 1921, a central counting system may be used by any county, or any city and county, in California. In cities using proportional representation, a central count system is used, either for the whole city or for large districts.

As a result of election frauds in the primary count of 1938 in Indiana, an act was passed requiring all counties having within their borders cities of the first or second class to tabulate their votes by means of a central count. The ballot boxes are to be sealed when the polls close, and brought to a central point within the county for tabulation by fresh workers who have had special training. The duties of the persons who conduct the election end with the closing of the polls. The new plan was used in the election of 1940; and although defects appeared in the administration of the law, a recent appraisal holds that "it is an improvement over the old method of district counting."²² The cost per vote was less than in the 1938 election when the precinct system of counting was used.²³

The cost of registering voters and conducting elections is generally borne by the local governments. The state is interested in the honesty and efficiency with which elections are conducted; and since the requirements as to the way in which the election shall be conducted, such as size of precinct and number and pay of election officers, are prescribed by state law, a strong case for the state to pay part of the cost can be made. This principle is found in a law of 1940 in Louisiana which provides that the state and the local government shall each pay one-half of the cost of voting machines.

DATE OF MUNICIPAL ELECTIONS

Though in the colonial period and for some time thereafter borough and city elections were held on different dates than colonial and state elections, there gradually developed the practice of holding

²² J. K. Eads, "Indiana Experiments with Central Ballot Count," 29 *Nat. Mun. Rev.* 545 (Aug., 1940).

²³ *Municipal Year Book*, 1941, p. 534.

all elections on the same day. Several factors account for this change. While the qualifications for voting in the two classes of elections differed in the earlier period, these distinctions were gradually abandoned. It was more advantageous for the party leaders to have all elections on the same day, and they were probably influential in bringing about the change.²⁴

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this separation, and he is enabled to vote more intelligently and independently for the candidates.²⁷

FORM OF BALLOT

In a number of the colonies elections were conducted by the oral or viva voce method. This method of voting was considered to be open and manly. It was also felt that the better citizens by voting openly would be able to influence those voters who were less well informed. Open voting was opposed by some, however, as an agency of intimidation by which the wealthier classes could influence the vote of the poor, especially where the employer-employee relationship existed. Gradually there was a shift to voting by ballot, and by 1850 this method was used in all the states except Virginia and Kentucky.

It was the early practice in voting by ballot for the voter to write on a slip of paper the names of the candidates for whom he was voting. Parties saw their opportunity and began to print lists of their candidates which could be used by the voter as a ballot. All he needed to do was drop in the box this printed list which had been prepared for him, and he would thus vote a straight party ticket.²⁸ These lists were often printed on colored paper so that party leaders could see how a man voted. When they bought votes they could be sure, by watching the voter deposit the proper-colored ballot in the box, that the vote was delivered. Some states attempted to meet this situation by requiring all ballots to be printed on plain white paper. White paper of different texture or finish was then used to accomplish the same purpose. Ballots were printed on very thin paper and this aided in ballot-box stuffing.

Because of fraudulent voting in cities following the Civil War there arose agitation for ballot reform. This finally resulted in the introduction of the Australian ballot, which was first used in the

²⁷ See pp. 466-470 for further consideration of the short-ballot principle.

²⁸ If a voter wanted to vote for most of the candidates on one of these lists but not for all of them, he "scratched" the names he did not want to vote for and wrote in the names of others. This is the origin of the term "scratching" a ballot, which is used today to refer to the practice of not voting a straight party ticket.

United States at a city election in Louisville, Kentucky, in 1888;²⁹ Massachusetts in the same year passed an act providing for the Australian ballot. The movement spread rapidly and the ballot was adopted by 32 states by 1892. Today all except two states provide for the use of the Australian ballot in elections.³⁰

Although there are variations in the use of the Australian ballot, E. M. Sait enumerated the following as the four essential characteristics: (1) It is printed by public authority and at public expense; (2) it is a blanket ballot, bearing the names of all candidates who have been nominated according to law; (3) it can be obtained only within the polling place and from the officers who conduct the election; and (4) it is marked in the absolute secrecy of the polling booth, folded there to conceal the marks, and publicly deposited in the ballot box.

The original Australian ballot did not carry party designations. As used in the Louisville municipal election of 1888, no party designations were placed on the ballot, the names of the candidates being arranged in alphabetical order under the titles of the various offices. The Massachusetts law of 1888 provided for party designations. The ballot was the office group type as in Louisville, but party designations followed the names.

A new innovation in the Australian ballot was introduced by Indiana in 1889. It was provided that each party be given a separate column on the ballot, the party name and emblem being placed at the top of the column and the names of the candidates under the office titles. By making a cross in the circle at the head of the party column the voter can vote a straight party ticket. Under the Massachusetts or office group type of ballot a separate vote must be indicated for each office. A voter can vote a straight ticket only by putting a cross in the square opposite the name of every candidate of his party. The Massachusetts ballot is favored by those who believe in independent voting because it is as easy for the voter to

²⁹ The Australian ballot derives its name from the country in which it originated. This system of voting originated in Australia in 1856, and was adopted in England in 1872.

³⁰ South Carolina follows most closely the old practice relative to ballots. The only requirement in that state is that the voting be on ballots made of plain white paper. The only other state whose ballot does not meet the requirements of the Australian system is Delaware. E. M. Sait, *op. cit.*, p. 733.

split his ticket as to vote a straight party ticket. The Indiana type of ballot, which is more widely used, is generally favored by politicians because it makes straight party voting easier.

VOTING MACHINES

Voting machines, which have been authorized in several states, eliminate the use of paper ballots.³¹ Where such machines are used, instead of entering a polling booth to mark his paper ballot, the voter enters a booth in which there is a voting machine. As he closes the curtain, the machine is automatically unlocked for use. On the face of the machine, the office titles, names of candidates, and party designations appear. They may be arranged in either the office column or the party column type of ballot. Provision is also made for sticker candidates or for writing in names which do not appear on the ballot.

Above the name of each candidate is a lever or pointer which the voter pulls down for the candidates for whom he desires to vote. A party lever, where the party column ballot is used, makes it possible to vote a straight ticket. The machine is so constructed that it is not possible to vote for more than one candidate for each office. Where there are a limited number of candidates for whom he may vote, such as five or seven members of the council, the machine locks after the voter has made the permissible number of choices. The construction of the machine also makes it impossible to spoil a ballot. This is an important factor in closely contested elections, for the number of spoiled paper ballots is larger than is generally realized.³² The voter may change his vote at any time before he

³¹ For an excellent study of voting machines, see T. David Zukerman, *The Voting Machine*, published by the Political Research Bureau of the Republican County Committee of New York, 1925. Also see T. David Zukerman, "The Case for Mechanical Balloting," 14 *Nat. Mun. Rev.* 226 (Apr., 1925); T. David Zukerman, "The Voting Machine Extends Its Territory," 21 *Am. Pol. Sci. Rev.* 603 (Aug., 1927); H. D. Inman, "The Voting Machine and What It Accomplishes," 1 *Mich. Mun. Rev.* 70 (May, 1931); J. K. Pollock, *The Use of Voting Machines in Michigan*, publication No. 5, Bureau of Government, Univ. of Michigan, 1926; M. P. Heavenrich, *The Use of Voting Machines in Thirty-five Cities or Counties*, Institute of Research and Planning, Flint, Michigan, (1939).

³² On the importance of spoiled ballots in elections, see R. F. Griffen, "Voting Machines: Theory and Experience," 32 *Am. City* 167 (Feb., 1925).

leaves the machine as the votes are not recorded until he opens the curtains to leave the booth. As the voter draws the curtains aside, the levers return to their normal positions, thus concealing the way in which he voted. Since the curtains must be opened for the vote to be recorded, he cannot vote a second time without being observed by election officers and watchers.

The voting machine automatically records the votes cast for the various candidates. At the opening of the polls, the counter or register is inspected by officers and watchers to insure that the counters are set on zeros. This compartment is then locked and sealed, or locked with other keys which are kept by election judges of different party affiliations. At the close of the polls this compartment is opened and the vote cast on the machine for each candidate is shown by the register.

Beginning with New York in 1892, more than half the states now authorize the use of voting machines. Six states which formerly authorized their use have since repealed these laws.³³ Though extensively authorized, voting machines are actually used in only about a dozen states. In some of these states they are extensively used, over 3500 cities, towns, and villages voting by machines. Machines were used in all districts in New York for the election of 1938. Connecticut, Indiana, Iowa, and Washington are other states in which they are extensively used. Among the larger cities which use them, to some extent at least, are New York City, Buffalo, Rochester, and Syracuse in New York; Hartford and New Haven in Connecticut; Philadelphia, Pittsburgh, Scranton, and Wilkes-Barre in Pennsylvania; Baltimore, Maryland; Indianapolis, Indiana; Grand Rapids, Michigan; Des Moines, Iowa; St. Paul and Duluth in Minnesota; New Orleans, Louisiana; Seattle and Tacoma in Washington; and Los Angeles and San Francisco in California.

³³ Laws authorizing the use of voting machines have been declared unconstitutional in some states. The Ohio act of 1899 was declared unconstitutional on the ground that the word ballot as used in the state constitution meant a "written paper." *State v. Supervisor of Elections*, 80 Ohio St. 471, 89 N.E. 33 (1909); *State v. Miller*, 87 Ohio St. 12, 99 N.E. 1078 (1912). In 1929, however, a new act was passed. The supreme court of Ohio has held that a home-rule city may provide for voting machines in municipal elections but not county and state—"County and state elections are not a matter of municipal concern." *State v. Green*, 101 Ohio St. 301, 168 N.E. 131 (1929).

The use of voting machines is usually made optional with the local authorities, but in a few states mandatory provisions are found. In all parts of New York State, and in all counties or cities of a certain class or size in Connecticut, Indiana, and Montana voting machines must be used. Their use was made compulsory in New Orleans in 1940 by state law, and their adoption in other parishes by popular vote was permitted. In the same year, their use in the two largest counties of New Jersey was made compulsory by legislative act.

Chief among the advantages offered by the voting machine is the economy which results from the greater speed and accuracy. Since a voter may vote with greater speed it is possible to have fewer and larger voting precincts.³⁴ Baltimore reduced the number of voting precincts from 685 to 471 with the use of voting machines. Fewer election officers are needed in each precinct if voting machines are used. Since the count is automatic, the election officers devote fewer hours to their work, and their compensation may thus be reduced. Before the machines were used in Baltimore there were in each precinct four election judges and two clerks, each of whom was paid \$12.00 per election day. After the machines were used, this was reduced to four election judges, each receiving \$10.00 per election day. In New York City the pay of inspectors on election day was reduced from \$15.00 to \$10.00 after voting machines were introduced. The printing bill is also less. Only name plates for the machine are needed, and their cost is less than that of paper ballots.

Not only is there this saving in cost but the result is more accurate. The dishonest manipulation of voting machines, if at all possible,³⁵ is much more difficult than stuffing the ballot box where paper ballots are used. This probably accounts for the opposition of political organizations in some of our larger cities to this new method of voting. When machines were first put on the market, some of them broke down during elections or registered improperly. Today, however, they have passed through that state, and "machines of

³⁴ When voting machines are first introduced, the advantage of greater speed may not be realized because of the confusion on the part of the voters.

³⁵ One writer states: "By using a nail an expert election worker can fix the voting machines so that they will or will not register certain names. By tying a rope to the top of the booth, he can prevent the votes from being registered." E. H. Lavine, *"Gimme," or How Politicians Get Rich*, p. 68.

standard make are as reliable as commercial adding machines."³⁶ In case of a disputed election, recounts are less difficult. Few such cases have been reported, but there was one recount in Grand Rapids, Michigan, which was completed in one day at practically no expense. The McKee recount in New York City in 1932 was carried out for the entire city at an expense of less than \$5000.³⁷ A report on election administration in cities in New York State, in considering this aspect of the voting machine, says: "The expense of litigation following contests is greatly reduced or entirely eliminated. While it is possible to bring contests into court, they are not kept there long, since the re-canvass of a machine district is only a matter of a few minutes as compared with the days often spent in recounting paper ballots."³⁸

The available experience and evidence are not conclusive as to whether elections can be conducted at a lower cost per vote when voting machines are used. In the presidential election of 1920, election expenditures in Iowa averaged from 18 to 21 cents per vote in counties where voting machines were used, and from 40 to 77 cents where paper ballots were used. The cost in Seattle in the same year was 12.4 cents per vote cast, as compared with 28 cents per vote cast eight years earlier when paper ballots were used. Polk County, Iowa, reports a cost of 11 cents per vote where voting machines are used, as compared with 46 cents per vote at the last election in which paper ballots were used. The accompanying table shows where savings are made by the use of voting machines. These figures are for Muscatine County, Iowa, which cut the cost per vote from 45 cents to 14 cents.³⁹

³⁶ E. M. Sait, *op. cit.*, p. 754. Cf., however, Elbert Eibling, "Trouble with Voting Machines in Pittsburgh," 20 *Nat. Mun. Rev.* 740 (Dec., 1931). In the November, 1945, election in New York, mechanical flaws developed in the machines, 117 machines breaking down during the day. An attempt was made to void the election, but the court held that "it is apparent that the defect in the machines did not bring about the defeat of any of the petitioners, or that the result would have differed if the machines had functioned properly." *New York Times*, Nov. 7, 8, 10, 30, 1945.

³⁷ *Majority and Minority Reports of the Joint Legislative Committee to Revise the Election Law*, Legislative Document No. 84, New York, (1939), p. 16.

³⁸ H. R. Goslee, *op. cit.*, p. 29.

³⁹ 35 *Am. City* 802 (Dec., 1926). Also see 37 *ibid.* 746 (Dec., 1927); 39 *ibid.* 104 (Oct., 1928).

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ELECTION EXPENSES, PRESIDENTIAL ELECTIONS OF 1920 AND 1924

| | 1920 | 1924 |
|------------------------------|-----------|-----------|
| Judge | \$ 585.60 | \$ 318.45 |
| Clerk | 406.80 | 90.30 |
| Construction | 106.50 | 47.00 |
| Printing ballots | 854.75 | 178.00 |
| Poll book and supplies | 2099.67 | 397.45 |
| Miscellaneous | 248.90 | 169.10 |
| | <hr/> | <hr/> |
| Totals | \$4302.22 | \$1200.30 |

It should be pointed out, however, that the Committee on Election Administration of the National Municipal League in its report of 1933 stated that the actual savings made by the use of voting machines are very small. "Machines should not be purchased ordinarily with any thought of effecting substantial economies," it said. "The real merits of machines are that the results are accurate, the danger of fraud is greatly lessened, the returns are secured within a short space of time, and expensive recounts are avoided."⁴⁰

A recent report on election administration in Baltimore gives the following summary as to the merits of voting machines:

The installation of voting machines has improved the method of recording and of counting votes and assures greater speed and especially accuracy by the automatic tabulation and counting of votes. The machine is a precaution against spoiled votes since it takes the place of marking paper ballots, many of which formerly were judged invalid by election officials because the voters in marking ballots did not conform to certain little-known rules. The use of voting machines also made possible a reduction in the number of precincts, which eliminated 2226 election officials in the precincts and reduced that item of election costs \$67,000 or 50 per cent per election year.⁴¹

The failure of voting machines to be more generally used may be accounted for in part by their initial cost. The machines used in New York City cost \$940 each, and there are between 3000 and

⁴⁰ 19 *Nat. Mun. Rev.* 653 (Sept., 1930).

⁴¹ *Baltimore Elections and Proportional Representation*, Report of Commission on Governmental Efficiency and Economy (1940), p. 18.

4000 voting precincts in that city.⁴² It has been estimated that the type of machine required in Detroit would cost approximately \$1300 each; the total cost of equipping the city with machines, including suitable storage facilities, would be about \$1,600,000. The amortization of this amount would be about \$107,000 per year during the conservative life of the machines.⁴³ Some of the studies which indicate that elections can be conducted at a lower cost per vote with machines have not given adequate consideration to this overhead cost. If adequate allowance is made for interest on the investment, and for depreciation and obsolescence, the economy argument for using machines is often found to be false.

There is some risk involved for cities in making this large expenditure for voting machines because they may become obsolete as a result of changes in election laws by state legislatures. This has been the experience in Minneapolis and Wisconsin. No machine has been devised for use in proportional representation elections. A charter amendment to adopt proportional representation would necessitate the use of paper ballots, rendering the voting machine obsolete. This risk of loss because of obsolescence has undoubtedly been a factor in deterring cities from installing these machines. Voting machines are used in general elections in Indiana, but it has been found that they are not large enough to carry all the names in a primary, hence paper ballots must be used. The clerk of Marion County has stated that the replacement cost of \$750,000 would be prohibitive. That this weakness has appeared in other cities is indicated in a report of the Flint, Michigan, Institute of Research and Planning which states: "In many cities, the number of candidates in a primary election is too large to permit the use of voting machines; therefore in those cities, the use of the machines is limited to general or special elections, paper ballots being substituted in the primary."⁴⁴ Rather than being a criticism of the voting machine, however, it would appear that there was a lack of foresight on the part of those who purchased the original machines. But even with reasonable fore-

⁴² G. Mason, "Up-State New York Modernizes the Metropolis," 141 *The Outlook* 273 (Oct. 21, 1925).

⁴³ 4 *Mich. Mun. Rev.* 70 (May, 1931). It was estimated, however, that the reduced number of precinct officials, and the reduced pay because of the lighter duties, would lead to a saving of about \$134,000 a year.

⁴⁴ M. P. Heavenrich, *op. cit.*

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sight, there is a possibility that the machines may become obsolete, especially as a result of legislative enactments.

The expenditure of large sums of money for voting machines has meant opportunity for graft. In some cases politicians have taken advantage of the opportunity. Revelations in this connection have brought the voting machine movement into disfavor in some states. It was alleged during the Chicago voting machine investigation, which was begun by a committee of the Illinois legislature in 1913 and lasted for two years, that over \$200,000 had been spent to secure the voting machine contract of that city.⁴⁵ The investigation brought the voting machine movement into disrepute in that state, and no use has yet been made of them.

ABSENT VOTING

Provision has been made in several states by which voters who are absent from home on election day may vote. Some northern states provided for voting by soldiers in the field during the Civil War; but Vermont, in 1896, was the first state to provide that absentee civilians might vote by mail.⁴⁶ Such laws are found today in 45 states. The Kentucky, Pennsylvania, and New Mexico laws were declared unconstitutional in 1921, 1925, and 1936, respectively. Some states have repealed their laws on absent voting. Three states—Maryland, New Jersey, and Pennsylvania—limit absentee voting to persons who are absent because of military service in time of war. During World War II several states amended their election laws to facilitate voting by men and women in the military and naval service. In 1942, Congress enacted a law providing for absentee voting by persons serving in the land or naval forces, but this applied only to voting for President and Vice-President, United States Senators, and Representatives in Congress.

While there are many variations in absentee voter laws, two important types can be distinguished. Under one type of law, generally referred to as the Kansas type, the absent voter secures his ballot

⁴⁵ See *Chicago Voting Machine Investigation, Report of the Legislative Committee*, 1915.

⁴⁶ On the earlier development of absent voting in the United States, see W. T. Donaldson and L. H. Roseberry, "Absent Voting," 3 *Nat. Mun. Rev.* 733 (Oct., 1914).

on election day from the election officers at the place in the state where he happens to be, votes it, and sends it back to his home county to be delivered to his voting precinct and counted. Unless he remembers the names of candidates for local offices in his home district and writes them in on his ballot, his vote is limited to state and national officers. Under this plan the ballot will arrive late and can be counted only in the official count. Since the absentee vote is small, this tends to destroy the secrecy of the absentee voter's vote. Only five states use this type of absentee voting—Arkansas, Florida, Kansas, Nevada, and Oklahoma.

Under the North Dakota plan of absentee voting the ballot is secured from the voter's local precinct prior to the day of election. Application must be made for such a ballot a specified number of days before the election. The ballot is taken before a notary, exhibited to show that it is unmarked, voted, placed in the envelope, sealed and stamped by the notary, who attests that it has been voted in secret. The ballot is then mailed to the precinct election officers, who open it, place it in the box, and count it along with the other ballots. Secrecy as to the way the absentee voter voted is thus secured.

There are other variations in absent voting laws, some, as in New York, applying to elections alone, and others, as in South Carolina, to primaries only. Although some states place no restrictions on the cause of absence, others limit quite rigidly the conditions under which an absentee may receive a ballot. Some states limit absent voting to those within the state; some to persons within the United States; but some permit absent voting for those outside the country. In 24 states persons who are ill or disabled may vote by absent ballot, but in other states an absentee voter must be actually absent from the voting precinct on election day.⁴⁷

Advocates of absent voting claimed that a large number of desirable voters were being disfranchised by absence from home on election day and that they would make use of the ballot were it possible to do so. It was some of the most desirable citizens that were disfranchised by this situation, it was said. The actual use of absent voting, however, has been discouraging. Except for the vote of the

⁴⁷ On variations in absentee voter laws, see J. K. Pollock, Jr., *Absentee Voting and Registration*; Helen M. Rocca, *A Brief Digest of the Laws Relating to Absentee Voting and Registration*.

military personnel in World War II, the largest number of absent votes cast in New York City was 924, in the presidential election of 1924. Less than 1000 votes out of 1,404,404 indicates that absent voting is a small factor. In 1923 only 226 persons out of a possible 75,000 took advantage of the absent voters law in Chicago. In a city with a potential electorate of 1,400,000, this indicates that absent voting is of little practical significance. Professor Pollock's study in Ohio indicates that a higher percentage of rural than urban voters take advantage of the absentee voters law of that state. In the general election of 1920 in Ohio, 0.89 of 1 per cent of the total vote was cast by absent voters. The percentage had risen to 1.05 per cent of the total in 1922, and to 1.22 per cent in 1924. In the November, 1924, election there were 23,224 absent votes cast, out of 1,893,779.⁴⁸ Professor Harris in his study of election administration also found little use of absent voting laws, with absent ballots usually constituting less than 0.5 of 1 per cent of the total vote cast.⁴⁹ A more recent study by Professor Steinbicker estimates that nearly 2 per cent of the 45,000,000 votes cast in the November, 1936, election were absentee votes,⁵⁰ but doubt has been raised by others as to the accuracy of his estimates.⁵¹

THE SHORT BALLOT

In keeping with what has been conceived to be the principles of democracy, election has been the predominant method of selecting officers. We have applied it not only to policy-determining officers but also to administrative and judicial officers. The direct primary has placed upon the electorate the additional burden of nominating candidates for these offices. With our practice of "running" for office rather than "standing" for office as in England, the number of candidates seeking these positions has been large. After nominating and electing public officers, the voter in several states is supposed to exercise close supervision over them through the recall.

⁴⁸ Based on 81 of the 88 counties of the state. James K. Pollock, Jr., "Absent Voting," 15 *Nat. Mun. Rev.* 282 (May, 1926).

⁴⁹ J. P. Harris, *op. cit.*, p. 293.

⁵⁰ P. G. Steinbicker, "Absentee Voting in the United States," 32 *Am. Pol. Sci. Rev.* 898 (Oct., 1938).

Finally, if elected representatives do not properly carry out his wishes, the voter may use the initiative and referendum to override their action. As Charles A. Beard says, "We have apparently assumed that it [the electorate] can do everything, from deciding who among ten thousand should be clerk of a municipal court to prescribing what should be done with the surface dirt removed from a street by a public contractor."⁵²

The result of this philosophy of democratic government is a ballot of such length that it cannot be voted intelligently. Some extreme cases of long ballots may be cited. The ballot in one assembly district in New York City in 1906 carried 835 names for the voters to consider. The ballot in a Chicago congressional district in the same year carried the names of 334 candidates for 26 offices. The ballots of all parties in the 1916 Chicago primary contained 1873 names, over 400 on each party ballot, from which the voter was asked to select candidates for 51 offices. The Indianapolis Republican primary ballot of 1926 contained 134 names for 36 offices. The Wayne County, Michigan (Detroit), ballot of 1935 carried over 300 names. In a recent primary in one of the more populous up-state counties in Michigan, well over 100 candidates sought nomination to the office of sheriff.⁵³

Not only are there many offices to be filled, but there are often a number of initiative and referendum measures to be considered. In 1920, the ballot in Portland, Oregon, listed 52 offices and 18 measures—eleven state and seven municipal. Forty-eight measures appeared on the San Francisco ballot in that year. The ballot in Los Angeles in 1926 listed 45 offices and 58 measures. Separate ballots are often provided for certain elections, such as national, state, county, municipal, and judicial elections, and for initiative and referendum measures. Ten separate ballots were handed the voter in the regular November, 1928, election in Omaha. In the Chicago primary of 1926 the Republican ballot contained 151 names, and the Democratic 106. A separate ballot contained 19 bond issue propositions referred by the city council. The optional boxing bill was sub-

⁵² Charles A. Beard, "The Ballot's Burden," 24 *Pol. Sci. Quar.* 589 (Dec., 1909).

⁵³ H. M. Dorr, "Tightening the Direct Primary in Michigan," 30 *Am. Pol. Sci. Rev.* 512 (June, 1936); 31 *ibid.* 56 (Feb., 1937). Also see 15 *Nat. Mun. Rev.* 527 (Sept., 1926); C. E. Ridley, "How Can City Costs Be Lowered?" 109 *Engineering News-Record* 13 (July 7, 1932).

mitted on another ballot. A Chicago newspaper, discussing the voter's burden in this primary, said: "Voting on public expenditures and public policies Tuesday was equal to making a will, writing farewell messages to all one's friends, reading the Declaration of Independence and the Constitution, ordering the groceries, doing the spring housecleaning and obtaining a passport—all in the five minutes a voter was permitted to stay in the booth."⁵⁴

With so many candidates and measures, the ballot is often unreasonably large. In 1912 the Nebraska ballot was 8 feet by six inches in size, and the New York City Republican ballot in the 1912 primary was 14 feet long. The ballot used in the presidential election of 1928 in Pennsylvania was 36×24 inches; that used in the Illinois election of 1930 was 32×25 inches.

Although the above discussion is not limited to ballots used in municipal elections, it indicates something of the burden placed upon the voter in the American city. If consideration is given only to municipal officers and propositions, the ballot is too long.

To counteract this tendency to lengthen the ballot, there was formed in the United States in 1911 the Short Ballot Organization, which supported the principle of fewer elective officers. This organization favored the application of the elective principle to only those offices which are important enough to attract (and deserve) public examination, and it advocated the filling of very few offices by election at one time, so as to permit adequate and unconfused examination of the candidates. As pointed out earlier, separating the date of municipal from state and national elections promotes one aspect of the short-ballot principle by electing fewer officers at one election. The other phase of the principle, the election of those offices "which are important enough to attract (and deserve) public examination" is still present even though the date of municipal elections is separate from that of state and national elections. Among the advocates of the short-ballot principle have been Woodrow Wilson, Theodore Roosevelt, William Howard Taft, and Charles Evans Hughes.

While the short-ballot movement seeks to encourage intelligent voting by having fewer elective offices, there is the further problem

⁵⁴ *Journal*, Apr. 15, 1926, quoted in C. H. Woody, *The Chicago Primary of 1926*, p. 247.

of decreasing the number of candidates seeking nomination in the direct primary. Fewer elective offices will help in solving the problem at the election; but if the voter is to vote intelligently in the primary, the number of candidates seeking nomination must be reduced.⁵⁵

The long ballot has been attacked on the ground that where so many officers are to be elected there cannot be adequate public scrutiny. The long ballot leads to what Richard S. Childs has called the asparagus system of voting.⁵⁶ The politicians tie the candidates up in bunches, and the elector votes for a bunch, knowing little about the individuals in the bunch. The real selection is made by the politicians who are effective in making up party tickets. Even in a non-partisan election this means that the candidate with organization support has a distinct advantage. "In the folds of the long ballot," says Sait, "whether on primary day or on election day, the boss is hidden. The voters make a gesture of electing public officers; too often they are merely ratifying appointments that the boss has made."⁵⁷ The long ballot at least discourages independent voting if it does not make it impossible. As suggested in a recent study of Detroit elections, "The voter in self-defense, when confronted with a ballot with 47 offices to be filled, takes the easiest way out and makes a cross in the circle at the top of the column in which he recognizes a few names."⁵⁸ This is exactly what the politician hopes he will do.

The short ballot means the concentration of greater power in the hands of fewer elective officers. Greater appointing power would be given to these elective officers. This concentration of power should lead, and in the field of city government has led, to improvement. Speaking before the New York Constitutional Convention in 1915, Elihu Root said that American cities had been lifted from the low grade of incompetency and corruption portrayed by James Bryce in his *American Commonwealth* by applying the principles of the

⁵⁵ For further development of this point, see H. M. Dorr, *op. cit.*

⁵⁶ R. S. Childs, *Short-Ballot Principles*; R. S. Childs, "Politics Without Politicians," reprinted from *Saturday Evening Post*, Jan. 22, 1910, by National Short Ballot Organization.

⁵⁷ E. M. Sait, *op. cit.*, p. 686.

⁵⁸ D. S. Hecock and H. A. Trevelyan, *Detroit Voters and Recent Elections*, p. 11.

short ballot, "by giving power to the men elected by the people to do the things for which they were elected." O. Garfield Jones has taken the position that the crux of the short-ballot principle is that administrative officers should not be elected. According to him, this, rather than the number of persons to be voted for, is the fundamental purpose of the short ballot. He has suggested that the principle might be expressed briefly as follows: "The short ballot system is a system of government in which few or no administrative officers are elected."⁵⁹ Richard S. Childs, a leader in the short-ballot movement, concedes that this has probably become the most important phase of the short-ballot principle but contends that it is not the only one. Thus he holds that the former plan in Cleveland of electing 25 councilmen at large by proportional representation violated "the short ballot principle in spite of the fact that all were important and all were representatives, not administrators."⁶⁰

The short ballot has made its greatest progress in the field of city government. This is especially true of commission- and manager-governed cities. In cities where plans of administrative organization have been adopted there has generally been a reduction in the number of elective officials. Those elected have been given power to appoint the purely administrative officers, and the principle of centralization of administrative responsibility has thus been applied. But the short-ballot principle has not received the acceptance it deserves on the basis of its merits. There is further need for lightening the burden placed on the electorate, and purely administrative officers should be appointed rather than elected.

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Initiative, Referendum, and Recall

In the preceding chapters, the composition of the electorate and the conduct of elections have been discussed. As has been pointed out, democracy has not functioned in an entirely satisfactory manner in the American city. Nevertheless, there are those who believe with Brand Whitlock, former mayor of Toledo, that "the cure for all the ills from which cities suffer is not, as many suppose, less democracy, but more democracy."¹ The initiative, referendum, and recall are the result of this philosophy. Government through elected representatives not proving satisfactory, provision has been made for direct government by the people through the initiative and referendum. If the council fails to enact needed or desired ordinances, the use of the initiative makes it possible to appeal directly to the voters to remedy these errors of omission; and if ordinances which are not wanted or needed are enacted, the voters by the use of the referendum can prevent this legislation from becoming effective. The initiative and referendum serve as a means of administering an indirect rebuke to the council for failure to be more responsive to and respectful of the wishes of the voters. The recall has been provided to enable the electorate to hold its elected representatives to a greater degree of responsibility. It is a means of removing a public officer before the end of his regular term of office. As in the case of the initiative and referendum, the recall is an attempt to strengthen democracy by more democracy, thus placing an added burden on the voter.

DIRECT LEGISLATION

Direct legislation by the electorate takes four forms: (1) required or compulsory referendum, (2) optional or voluntary referendum,

¹ Brand Whitlock, in *Conf. for Good City Govt.*, 1907, p. 193.

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(3) referendum by petition, and (4) initiative. The required referendum is the oldest of these devices. Under this type of direct legislation, the state constitution, laws, or city charter requires certain questions to be submitted to the voters for their approval. Charter amendments, changes in municipal boundaries, and bond issues are frequently subject to the required referendum. This is an adaptation to city government of the required referendum which is generally found in state constitutions for constitutional amendments and bond issues. In many cities, measures which must be submitted under the required referendum constitute a majority of the measures referred to the voters. Of 170 propositions voted on by the voters of Detroit in the fifteen-year period 1910-24, 136 were submitted compulsorily under the constitution and laws of the state.² During the period 1924-39, inclusive, the voters of Los Angeles voted on 131 specific charter amendments, the submission of charter amendments to the voters being compulsory.³

Under the optional referendum, the determination of whether a question shall be submitted to the electorate is left to the discretion of the city council. When a measure is before the council and the members are uncertain as to popular opinion, they may pass it subject to popular approval at a referendum. This device offers a means by which members of city councils may dodge responsibility and refuse to take a stand on a question before them. Considering the next election and fearing that their vote for or against the measure may be unpopular, they pass it subject to the referendum. Their defense is that they believe in democratic government and that, being uncertain as to public opinion on the question, they are willing to leave the decision to the voters. It should be pointed out, however, that in the Detroit study previously referred to, only 19 of the 170 propositions voted on were voluntarily submitted by the council.

The newest type of referendum is the referendum by petition, or protest referendum. It is this type that we have in mind when we refer to the referendum without specifying any particular type. Under this type of referendum a given percentage of the voters may

² "Direct Legislation in Detroit," 3 *Public Business*, No. 15, (June, 1925).

³ R. M. Ketcham, *Voting on Charter Amendments in Los Angeles*, published by Bureau of Governmental Research, University of California at Los Angeles (1940).

protest against an ordinance which has been passed by the council, and require the question of whether it shall go into effect to be submitted to the electorate. Where this type of referendum is in effect, the city charter or the state law usually provides that no measure, except emergency measures,⁴ shall become effective until the expiration of a specified time, usually 60 days after its enactment. During this period a certain percentage of the voters, usually 5 to 15 per cent, may file a protest petition requiring the ordinance to be submitted to the electorate. The petition is presented to a designated officer, usually the city clerk or registrar of voters, for checking to determine whether the number of signers is sufficient. If the number is adequate, the ordinance does not take effect until a popular vote can be had. The determination of whether the question shall be submitted at a special election or at the next general election is generally left to the discretion of the council. If the vote on the ordinance is unfavorable, it is defeated and does not become effective, the referendum being in effect a popular veto—but not subject to being overridden, as is the case with the executive veto.

The referendum is negative in nature; it checks action which has been taken—its purpose is to prevent sins of commission. The initiative, on the other hand, is positive in nature; it is used when the council fails to take action, and hence is intended to correct sins of omission. It is the power reserved to the people to propose ordinances and amendments to the charter and to enact or reject these measures at the polls, independent of the city council.

Persons desiring the passage of ordinances or charter amendments usually seek first to secure their passage by the council. They have them introduced by a member of the council, they appear before committees, and they lobby to secure their passage. If, despite their efforts, the ordinance or amendment fails to pass, they can resort to the initiative.

⁴ In some cases the possible scope of emergency legislation has been limited to measures necessary for the immediate preservation of the public peace, health, and safety. Some courts have held that it is for the legislative body to determine what laws come within the exception, and that its conclusion is final. Other courts, however, have held that legislative declaration of an emergency is not sufficient, for, as stated by the Supreme Court of Oregon, this would render such a provision futile. *Sears v. Multnomah County*, 49 Ore. 42, 88 Pac. 522, and 50 L.R.A. (N.S.) 212, and cases cited.

The procedure for the use of the initiative is similar to that for the referendum which has been discussed above. Signatures to a petition asking the submission of the question to the voters are secured, and if found to be sufficient in number by the city clerk, registrar of voters, or officer designated by law, the measure is submitted to the electorate. If the petitioners desire the submission of the measure at a special election, this may generally be secured by obtaining a greater number of signatures. The council is usually given a period within which to consider measures proposed by initiative petition; if it sees fit to adopt them, they are not submitted to the electorate, the petitioners having secured what was desired. If the measures are submitted to the voters and the vote is favorable, they become ordinances of the city. Some charters restrict the power of the council to amend or repeal such ordinances, but usually they have the same status as those passed by the council.

The initiative and referendum are now used in many American cities. Their use is more general in commission and council-manager cities, but they are also provided in many mayor and council cities. Among the larger cities in which they are used are Detroit, St. Louis, Los Angeles, San Francisco, Seattle, and Denver. New York, Chicago, Philadelphia, Boston, Pittsburgh, and Baltimore do not provide for the use of the initiative and referendum on petition.

Merits of Direct Legislation

Two forms of direct legislation—the compulsory and the voluntary referendum—have been accepted without much question.⁵ The protest referendum and the initiative have not been accepted without question. There has been, and still is, criticism of and opposition to these new devices for popular control over city government.

The initiative and referendum were offered as a means of breaking the power of machines and bosses and of placing the government in the hands of the people. No longer would it be advantageous for the machine to elect members of city councils. For if they granted special favors or “betrayed the public trust,” their action could be undone by the use of direct legislation. Sins of either omission or

⁵ Local option is a form of referendum by which the electors of a subdivision of the state determine whether or not a law shall be made applicable to them.

commission could be remedied. In actual practice, however, only in rare instances have the people risen up to smite a council which has "betrayed the public trust." It takes effort and money to secure signers to initiative and referendum petitions and to do the work necessary to bring measures before the voters. This will seldom be undertaken by persons who are interested merely in the public welfare. Rather such propositions are brought to a vote by people who stand to profit—usually financially. The amusement people attempt to get permission for Sunday shows from the council; if they fail, resort is made to the initiative. The machine is as effective in forming public opinion and controlling elections in which measures are being submitted as it is in the election of officers. Robert Luce has expressed the opinion that, were "money skillfully spent on unscrupulous leaders and in deceitful publicity, it is by no means sure that special privilege could not more easily be secured from the electorate than from a Legislature and Governor."⁶ This statement is equally applicable in city government.

The question arises as to whether the disregard of public opinion by city councils has been due to inherent defects in the representative system of government. There are those who believe that the initiative and referendum are not necessary for this purpose; these people take the view that disregard of public opinion by public officials is a result of public indifference and that in such cases any system of popular government, either direct or representative, will fail.⁷ The remedy for the situation, they say, is not more democracy (the initiative and referendum), but an improvement in the exercise of the powers now possessed by the electorate. It is said that public opinion functions more effectively when judging persons rather than principles. The larger vote on candidates than on measures is offered as evidence of this fact.

Another reputed merit of the initiative and referendum is their educational value. The added power given to the electorate will arouse in it a new sense of responsibility, it is said. It will now be worth while for voters to inform themselves on municipal affairs, since by the use of the initiative and referendum they can make their opinions and beliefs effective. The result will be a civic renaissance.

⁶ Robert Luce, *Legislative Principles*, p. 587.

⁷ A. B. Hall, *Popular Government*, pp. 139-140.

The publicity given to measures submitted to the voters through the initiative and referendum may have some educational value. All such measures must, in some cities, be printed in the local newspapers for a specified number of issues, and often in papers of opposite political faith. In some cities a publicity pamphlet is issued by the city authorities, containing the text of the measures and the arguments for and against them. The cost of preparing these pamphlets is in some cases borne by the city, but in others a charge for space is made and the proponents and opponents of the measures prepare their arguments and pay to have them printed.

Unfortunately, actual practice indicates that the educational value of the initiative and referendum is quite limited. There is no evidence of a greater sense of civic responsibility or knowledge of municipal affairs in cities using these two devices. The voters show less interest in measures submitted under the initiative and referendum than in candidates. In practically every case the vote on candidates is greater than on measures, about one-fourth of the voters failing to register any opinion on the propositions submitted.

That votes on measures are often rather unintelligent is shown by the advantage derived from wording them in a certain way. Since it is impossible to print the entire measure on the ballot, only the title, with a brief statement as to its nature, is given. The way in which this statement is worded may be an important factor in the outcome of an election. Robert Luce cites as a typical case the Arizona law of 1915 which, according to the title, represented to be for a system of old age and mothers' pensions.⁸ The people accepted the measure two to one, and in doing so they abolished their county hospitals and poor farms, leaving their indigent sick and other victims of poverty without care. The Supreme Court of Arizona expressed the opinion that not one voter in a hundred knew that all the county hospitals were to be abolished. "It was the generous and philanthropic title of the act," said the court, "that caught the eye and mind and heart of the voter."⁹ At the November, 1938, election, the voters of Salem, Oregon, indicated that they wanted a new courthouse but that they were unwilling to pay for it. By a substantial margin they approved a referendum on the building of

⁸ Robert Luce, *op. cit.*, p. 593.

⁹ Board of Control v. Buckstegge, 18 Ariz. 277, 158 Pac. 837 (1916).

a courthouse; but a second measure levying a tax to supply the necessary funds was rejected by a large vote.¹⁰

The initiative and referendum are a step away from the tendency toward scientific legislation. Municipal reference bureaus and ordinance-drafting bureaus are provided to collect material on city problems and to draft ordinances. Greater use can be made of these agencies where legislation is enacted by the council rather than by the people through the initiative and referendum. The information available to members of a city council in voting on measures is greater than that ordinarily available to voters with the initiative and referendum. In the council there are committee hearings and opportunities for debate and discussion which are not possible under direct legislation. Robert Luce has pointed out the advantage in this regard, of representative over direct democracy. Experience, he says, shows that the voter soon feels his incompetence to deal with technical detail and tends to meet the situation by voting against what he cannot understand. "The result is that fair decision is given only on simple, brief proposals relating to clear-cut moral and political issues which have had long and thorough discussion by the public."¹¹

Decisions under the initiative and referendum are often made by a minority of the voters. In his study of direct legislation in Oregon, J. D. Barnett pointed out that less than 40 per cent of the measures which had been approved by a majority vote on the particular measure at elections in that state received a majority of the votes cast at the election.¹² A study of votes on referenda in New York City during 1920-34, inclusive, indicates in many cases a lack of interest on the part of the voters in the questions submitted, with the decision being left to a minority. During this period 53 separate proposals were submitted, and on 12 of these the total vote was less than half the vote cast for the candidate with the highest vote in the election; in the case of 32 of the 53 proposals, less than 75 per

¹⁰ Herbert A. Simon, "Cities Go to the Polls," 20 *Pub. Management* 362 (Dec., 1938). Cf. John M. Selig, "San Francisco Voters Prove Sound 'Law-makers,'" 32 *Nat. Mun. Rev.* 486 (Oct., 1943).

¹¹ Robert Luce, *op. cit.*, p. 582.

¹² J. D. Barnett, *The Operation of the Initiative, Referendum, and Recall in Oregon*, p. 104. See also N. D. Houghton, "The Initiative and Referendum in Missouri," 19 *Missouri Historical Review* 268-299 (1924-25).

cent of those who voted for officers voted on the proposals.¹³ A study of the votes cast on charter amendments in Los Angeles during the period 1924 to 1939 also indicates a lack of interest in proposals submitted. After pointing out that "in the fourteen elections where amendments have been voted upon, an average of only 73.51 per cent of those casting ballots actually voted on all amendment proposals," the report concluded that "there seems to be a definite indication that charter issues generally are rather devoid of popular interest. . . . It would seem that contests between individuals for major offices attract considerably more interest than amendment proposals."¹⁴ In 1942, only 33 per cent of the registered voters voted on municipal proposals submitted in 44 cities of over 25,000 population. The lowest vote was 3.6 per cent of the registered voters in Fort Worth, Texas, voting on a \$276,000 bond issue, and the highest was 68 per cent in Melrose, Massachusetts, on a proposal to license the sale of alcoholic beverages.¹⁵

The problem of popular indifference, with decisions being made by the minority, may be remedied by requiring a majority vote of those voting at the election rather than of those voting on the proposition. The effect of such a requirement is that every voter at the election who fails to vote on the measures submitted casts a vote against them. Why, some ask, should a person with so little interest be permitted to defeat measures? Such a plan, it is said, allows the fate of measures to be decided by the negligence and indifference of non-voters, rather than by the intelligent vote of those voters who show interest enough to vote upon them. A recent study of direct legislation has offered the following criticism of this proposal:

Occasionally the suggestion is made that no measure shall become effective until it has received a majority of all the votes cast at the election at which it is voted upon. This proposal is usually made by well-meaning individuals with no conception of what the effect of its adoption would be. It seems quite obvious that such a rule would have the effect of entrenching more securely the position of those groups, both conservative

¹³ *Votes in New York City on Referenda, 1920-1934, Inclusive*, prepared by the Institute of Public Administration (1936).

¹⁴ R. M. Ketcham, *op. cit.*

¹⁵ 25 *Pub. Management* 18 (Jan., 1943)

and liberal, which have succeeded at one time or another in having their ideas transmuted into law, constitutional or statutory, and would make extraordinarily difficult the adoption of minor procedural and organizational amendments raising no issue of principle.¹⁶

Probably the most serious objection to the initiative and referendum is that they lengthen the ballot. As pointed out in an earlier chapter, one of the greatest obstacles to democratic government in the American city is the length of the ballot. Little is gained by decreasing the number of elective officers and increasing the ballot's burden by placing measures on it. "The ballot cannot be shortened," says William B. Munro, "by putting more things on it. If you merely remove names and substitute questions you are no better off. You are worse off, in fact, because it takes a greater measure of discrimination, on the voter's part, to vote wisely on measures than on men."¹⁷

When the number of measures submitted is large, it is impossible to get an intelligent vote. The number of measures submitted to state-wide referendum often places a heavy if not unreasonable burden on the voter; and when to these are added local questions, any hope of an intelligent vote seems lost. In November, 1934, the voters of California were asked to vote on 23 state-wide proposals; in November, 1936, the same number appeared in that state, but Louisiana took first place with 35 constitutional measures on the ballot. The three leaders in 1938 were Louisiana, with 28 measures on the ballot; California, with 25; and Georgia, with 23. In the November, 1940, presidential election, Louisiana led, with 28 measures submitted to the voters, followed by California, with 17. The number of local measures submitted varies, the highest number in any city in 1938 being 29; 18 in 1939; 15 in 1940; and 36 in 1941. The record is probably held by Los Angeles, where 58 measures appeared on the ballot in 1926. There were 48 measures on the San Francisco ballot in 1920. To hope for the formulation of an intelligent public opinion in such cases seems sheer folly. These are, of course, extreme cases; the average or typical number submitted is much smaller. Reports from 138 cities of over 50,000 population

¹⁶ V. O. Key, Jr., and W. W. Crouch, *The Initiative and the Referendum in California*, p. 540.

¹⁷ W. B. Munro, *Personality in Politics*, p. 35.

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revealed that in 1938 no local measures were submitted in 78 cities, and that a total of 222 measures were submitted in 60 cities. In 1939, 338 city-wide measures were voted upon in 143 cities of over 25,000 population, but 226 other cities in this population group referred no measures. In 1941, measures were submitted in 139 cities, but no city proposals were considered in 272 other cities.¹⁸

There is also a wide range of subject matter covered in the initiative and referendum proposals submitted to the voters. In a recent year, the following were among the questions submitted in cities (some of them were state-wide referendums): bond issues, tax levies, tax exemptions, liquor sales, civil service, pensions, chain-store license taxes, old age assistance, proportional representation, changes in the form of city government, daylight saving time, Sunday closing for movies, pari mutuel horse and dog racing, whether cab stands should be open to cabs of all companies, and whether the name of the city should be changed. When we consider the number of measures submitted and the range of subject matter covered, it is obvious that there has been an abuse in the application of the principle of direct legislation.

The ease with which signatures to a petition can be secured accounts in part for the great use of direct legislation. The voters have shown a readiness to put their names on petitions without much consideration or scrutiny of the proposals. "Are you afraid to let the people vote on it?" is the stock argument used in getting signatures. Professional "petition pushers" who will get signatures can be secured, the rate usually being five to ten cents per name. Many people sign petitions to get rid of such solicitors, to help them earn a day's wages, or because they "aren't afraid to let the people vote on it." In some cases there have been actual fraud and corruption in securing signatures.

Suggestions have been made for greater protection of the petitions in order to reduce the number of measures submitted. One suggestion is to prohibit the circulation of initiative and referendum petitions and to require that they be left with some designated

¹⁸ The Bureau of the Census has issued several special reports on city and state proposals voted upon in recent years. See *State and Local Government Special Studies*, Nos. 4, 8, 9; *City Proposals Voted Upon: 1940*; *City Proposals Voted Upon: 1941*.

public authority to whom voters might go and voluntarily affix their signatures. This would aid in checking fraud, and the petition would come nearer being an expression of real public opinion. If petitions were signed voluntarily by persons who would take the trouble to go to the central registration office and sign their names, the initiative and referendum might tend to represent more accurately the real public opinion of the people.¹⁹ It might, however, work to the advantage of pressure groups, for they would make the effort to go to a central place and sign petitions. Sacramento, California, provides in its charter that initiative and referendum petitions are to be kept on file for signatures at the office of the city clerk, "and no such petition shall be signed or presented for signature at any place other than the Clerk's office." In third-class cities in Pennsylvania, all petitions must be signed at the city clerk's office, and it must be done in the presence of an official. The question arises as to whether central signing may prove to be so burdensome as to nullify direct legislation by failure to make use of it. This has been the apparent result in some states.²⁰ The Oregon legislature at its 1935 session made it a crime to give or receive money for circulating petitions for initiative, referendum, or recall.

One of the needs of the American city is the accurate and honest formulation of public policy. In the case of the more technical problems, there is a question as to whether a public opinion can be said to exist. For example, the voters of Chicago were asked in 1929 to approve or disapprove of excess condemnation for that city. It is very doubtful if the voters understood the issues involved. To submit to a referendum vote measures upon which a public opinion is not possible is, says A. B. Hall, to submit the fate of legislation which may be of great importance to the best interests of the city, to the determination of caprice and chance. The result in such cases, he goes on, is "dictated by ignorance, accident, or caprice, rather than by public opinion or other rational procedure." He continues:

There seems no escape from the conclusion that the popular referendum not only fails to make any real contribution to the task of the accurate formulation of public policy, in those cases where the policy

¹⁹ J. D. Barnett, *op. cit.*, p. 74.

²⁰ Winston W. Crouch, "The Initiative and Referendum in Cities," 37 *Am. Pol. Sci. Rev.* 491 (June, 1943).

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involves technical and complex matters, but that it tends to give undue preference to temporary fancy and special interest, rather than to deliberate judgment and real opinion, and finally that it results in the veto of legislation by ignorance and the absence of opinion rather than by the intelligent judgment of the electorate.²¹

It was originally felt that direct legislation would be used by the radicals to sweep the masses off their feet and to inaugurate a regime of radicalism. In particular, it was believed that it would lead to a wave of socialistic enterprises in American cities, and that municipal ownership would become widespread. Actual practice has demonstrated that there is no basis for this view. The people have proved to be conservative in the use of these newer devices of democracy. When they do not understand a proposition, they either refuse to vote at all or they play safe and vote no.²² If they follow the first course, they leave the determination of the outcome to those with a special interest in the result. In the latter case, the legislation is killed because the people do not understand it rather than because they are opposed to its principle.

Census Bureau studies of the use of the initiative and referendum in cities support the statement in the preceding paragraph that the people have been conservative in the use of these newer devices of democracy. In 1938, of 201 state constitutional amendments and other measures of state-wide applicability voted upon in state elections, 115 proposals were approved and 86 defeated. In the same year, 222 local measures were submitted to the voters in 60 cities of over 50,000 population; of these measures, 129 were defeated and 93 were approved. Three hundred and thirty-eight local measures were submitted to the voters in 143 cities of over 25,000 population in 1939; of these, 183 were approved and 155 defeated. In cities of over 25,000 population, the voters approved 68 per cent of the city proposals submitted to them in 1940, and 57 per cent of those submitted in 1941. The voters of Los Angeles approved 15 and de-

²¹ A. B. Hall, *Popular Government*, pp. 126-128, by permission of The Macmillan Company, publisher.

²² *Ibid.*, p. 127. However, Professor Munro has stated: "It is well known to politicians, for example, that, other things being equal, the affirmative side of any question on the ballot has a great advantage. . . . The affirmative seems in fact, to have a bonus equivalent to that of the candidate whose name comes first on the ballot." W. B. Munro (ed.), *The Initiative, Referendum, and Recall*. p. 36.

feated 20 of the charter amendments submitted in 1941. Of the 189 state proposals submitted in 1940, 91 were approved and 98 defeated. Of the 134 municipal propositions voted on by the voters of San Francisco from 1932 to 1942, 72, or 53.7 per cent, were approved.²³ These results would seem to indicate some discrimination on the part of voters in passing upon the merits of proposals submitted to them.

There are some who believe that direct legislation has tended to lower the caliber of the men elected to state legislatures and city councils. Checks on legislative bodies limit their power to do good as well as harm. Men of high caliber are less interested in serving in legislative bodies where their hands are tied and their power to do constructive work is limited by constitutional and charter provision and by the initiative and referendum. Professor Munro has taken the view that "the surest way to impair the personnel of any representative body is to reduce its powers."²⁴

It is not possible to evaluate accurately the results of the initiative and referendum. There is no measuring stick to determine whether a particular law or ordinance is good or bad. An ordinance which results from the use of the initiative by the labor group may be very distasteful to business. There is no simple objective test to determine whether the result of the use of the initiative in that case was good or bad.²⁵ And there is no way to determine how valuable has been the indirect effect of the initiative and referendum upon city councils. Clinton Rogers Woodruff, former secretary of the National Municipal League, has taken the view that the initiative and referendum are probably "more valuable in their existence than in their use. Their existence impresses a sterner sense of duty and keener thoughts of responsibility in the minds of the officials."²⁶ Knowing that there is a gun behind the door, the councils, it is felt, have tended to tread the straight and narrow path of political righteousness. But, as has been pointed out above, it is not possible to measure the degree to which this affects the actions of legislators and councilmen.

In their study of the use of the initiative and referendum in California, V. O. Key and Winston W. Crouch found that it was the

²³ John M. Selig, *op. cit.*

²⁴ W. B. Munro (*ed.*), *op. cit.*, p. 25.

²⁵ T. H. Reed, *Municipal Government in the United States*, p. 275.

²⁶ *3 Nat. Mun. Rev.* 694 (Oct., 1914).

special-interest groups rather than "The People" who were using the gun behind the door. They concluded that proposals were submitted to the voters, not because they were put there by "The People" for the promotion of the welfare of the average man, but rather as a result of the activity of an interest group. "The initiators of propositions," they state, "have usually been pressure organizations representing interests—commercial, industrial, financial, reform, religious, political—which have been unable to persuade the legislature to follow a particular line of action."²⁷

Constitutionality of Direct Legislation

The initiative and referendum have been attacked as violating the provision of the federal Constitution guaranteeing to every state a republican form of government. The Supreme Court of the United States has held the question to be political and governmental and not, therefore, within the reach of the judicial power.²⁸ Though some state courts have taken the view that a provision in a city charter for the use of the initiative and referendum is not inconsistent with a republican form of government,²⁹ in the majority of state cases passing upon this question the decision is based upon the principle that the guaranty of a republican form of government does not apply to a subdivision of a state and that it is therefore unnecessary to decide whether the use of the initiative and referendum is inconsistent with a republican form of government.³⁰

RECALL

Methods have always been available for removing public officials from office before the expiration of their fixed terms. Among the

²⁷ V. O. Key, Jr., and W. W. Crouch, *op. cit.*, chap. ix.

²⁸ *Pacific States Telephone and Telegraph Co. v. Oregon*, 223 U. S. 118, 56 Law. Ed. 377 (1911); *State of Ohio v. Hildebrandt*, 241 U. S. 565, 60 Law Ed. 1172 (1916).

²⁹ *Hartig v. Seattle*, 53 Wash. 432, 102 Pac. 408; *Kiernan v. Portland*, 57 Ore. 454, 37 L.R.A. (N.S.) 339, 111 Pac. 379, 112 Pac. 402, 50 L.R.A. (N.S.) 198.

³⁰ *Re Pfahler*, 150 Calif. 71, 11 L.R.A. (N.S.) 1092; *Walker v. Spokane*, 62 Wash. 312, 113 Pac. 775. Also see W. A. Coutts, "Is a Provision for the Initiative and Referendum Inconsistent with the Constitution of the United States?" 6 *Mich. Law Rev.* 304 (Feb., 1908).

older methods are removal by judicial process, by impeachment, by legislative address, and by executive action. In the case of executive action, the removal was generally made by the mayor or city-manager, but in some states provision is made for removal by the governor or other state authority.³¹

In 1903, a new method of removing public officials—the recall—was introduced in the charter of Los Angeles. The recall may be defined as “a special election to determine whether an official shall be superseded before the ordinary expiration of his term.” While the recall usually applies only to elective officers, there are some exceptions, such as the city-managers of Dayton, Ohio, and Long Beach, California. The manager of the latter city was recalled in 1922.

About one-third of the states now provide for the use of the recall in all cities, and 23 others provide for its use in certain cities, generally those having the commission or council-manager type of government. The number of cities in which the recall is in use is well over 1000.³²

No complete figures are available on the actual use of the recall in our cities. A study made in 1930 of the use of the recall in California found that in that state alone, up to 1930, 208 recall movements had progressed to the stage of the filing of petitions, and of these, 155 had survived technical defects and official obstruction to result in elections or resignations.³³ Among the outstanding cases of the recall of municipal officials are those of the mayor of Los Angeles in 1909 and 1938, the mayor of Seattle in 1910 and 1931, and the mayor of Detroit in 1929. The entire city council of Long Beach, California, was recalled in 1934, and six of the nine councilmen in Fort Worth, Texas, were removed by this method in 1938. An attempt to recall the mayor of San Francisco in 1946 failed, the vote being 73,946 in favor of recall and 109,526 opposed.

The first step in the recall of a public officer is the securing of a

³¹ For removal by the governor, see Charles M. Kneier, “Some Legal Aspects of the Governor’s Power to Remove Local Officers,” 17 *Va. Law Rev.* 355 (Feb., 1931).

³² F. L. Bird and F. M. Ryan, *The Recall of Public Officers: A Study of the Operation of the Recall in California*, pp. 4-5. Also see J. O. Garber, “The Use of the Recall in American Cities,” 15 *Nat. Mun. Rev.* 259 (May, 1926).

³³ F. L. Bird and F. M. Ryan, *op. cit.*, p. 343.

petition demanding his removal. This petition contains a brief statement of the charges against the officer, and a demand for an election on the question of his continuance in office. The number of signers required to bring about a recall election varies from 25 to 55 per cent, the latter being required in commission-governed cities in Illinois.³⁴ The petition is filed with a designated officer, usually the city clerk or registrar of voters, who checks it to see if the number of signatures is sufficient. If the petition is found not to have the required number of names, a short period of time is usually allowed for the securing of additional signatures. If the petition contains enough signatures and the officer does not resign within a specified time, usually five days, the city council sets a date for the election.

There are several types of recall elections. In one type the officer merely becomes a candidate to succeed himself, his name appearing on the ballot with those of the other candidates. Although the specific question of his removal is not presented to the voters, the election has that effect, for the election of one of the other candidates removes the incumbent from office. Unless the officer whose recall is sought requests otherwise, he becomes a candidate to succeed himself without the formality of a nomination. Other candidates for the office are nominated by petition. This is the original method of recall as adopted in Los Angeles in 1903.

Another type of recall election provides for a separate vote on the recall of a public officer, and at the same time on the election of a successor in case the incumbent is recalled. If the majority vote on the first question favors his recall, the vacancy is filled by the candidate receiving the highest vote on the second part of the ballot.

The two ballot forms discussed above are unsatisfactory in that they do not present the question of the recall of an officer in a clear-cut, distinct manner. They are unfair to the person whose recall is sought because they inject into the recall an election campaign for a successor. The incumbent is required to run not only against his record but also against the opposing candidates for the office.

The third type of recall provides for the holding of an election exclusively on the question of removal from office. The successor is usually selected at a second election. In some states, as in Kansas,

³⁴ In Kansas only 10 per cent of the qualified electorate is required to bring about a recall for state officers, but 25 per cent is required for city officers.

when an officer is recalled, a vacancy exists "to be filled as authorized by law." Oregon, by constitutional amendment in 1926, changed the plan of having the recall determined by an election contest in which the person receiving the highest number of votes is elected, and provided that "if an officer is recalled from any public office the vacancy shall be filled immediately in the manner provided by law for filling a vacancy in that office arising from any other cause." The constitution of Louisiana provides that the "sole issue tendered at any recall election shall be whether such officer shall be recalled."

Most states place limitations upon the use of the recall and seek to protect public officers from undue harassment. In some states, officers are not subject to recall until after they have served for a specified period varying from three months to one year. Other states provide that if an officer is retained in office at a recall election, he is not subject to recall again until a specified time has elapsed; and in some states no second attempt to recall him may be made during the term for which he was elected.

In their study of the recall in California, Bird and Ryan found that broad sweeping generalizations characterized the formal statements of the grounds for the majority of recalls.³⁵ The causes most generally appearing in petitions for recall are "general incompetency and inefficiency," or that the incumbent has been "extravagant with and wasteful of Public Funds." In smaller places the grounds are often more specific and also more colorful. Petitioners for the recall of a member of the board of trustees in a small California city gave the following to support their charge that the trustee was "guilty of conduct unbecoming a gentleman, a citizen, and a public official":

At a mass meeting held in the said City of Chino on March the first, 1912, for the purpose of discussing questions of vital importance to the citizens of the said City of Chino, and in the presence of more than one hundred persons, a number of whom were women, the said John J. Houlihan, becoming angry, in a loud and boisterous manner, used vile and profane language; also removed his coat and threatened to fight and otherwise acted in a manner unbecoming one in his official capacity.³⁶

The question of the sufficiency of the charges upon which a recall may be sought has been before the courts. The law or the charter

³⁵ F. L. Bird and F. M. Ryan, *op. cit.*, p. 119.

³⁶ *Ibid.*, p. 141, by permission of The Macmillan Company, publisher.

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usually provides that the petition shall contain a general statement of the charges on which removal is sought. The courts have taken a liberal view of this, holding that the general statement of grounds is intended for the information of the voters and that the question of the sufficiency of the grounds is not open to review.

Factional political differences and political spite are unquestionably factors in many recall elections. It is one of the ways the "outs" can make trouble for the "ins." In such cases, campaigns are often more bitter than regular elections. Personalities play a more important part in a recall election than the official's record in office. This may be illustrated by the recall in a small California city, the formal grounds for the recall being "general incompetency and inefficiency." The following handbill, distributed by the recall faction, seems rather far removed from the record of the incumbent as a trustee:³⁷

Is it not a fact that Mr. Beck attended church only once in Azusa during his many years of residence here? And was it not the time that he went after the Presbyterian Minister with a gun? On account of a purported remark?

Is it not a fact that Mr. Beck can and does consume as much BOOT-LEG WHISKEY as any two men in Azusa? And that the police have seriously considered the raiding of his Service Station? And is it not a fact that Beck is notorious for drinking the other fellow's liquor?

Does not the statement made concerning the War record of Mr. Morden appeal to you as being very un-American? Mr. Morden can and will show his Service Record upon anyone's request. It is a known fact that Mr. Morden carries the severest War Wound of anyone in Azusa.³⁸

Friends and voters, remove this cancerous tumor that hangs on us like a barnacle, this bolshevist, this anarchist element, who through his Machiavellian antics has brought the fair name of Azusa into disrepute. Remove a political leech and vote for Roy E. Martin.

This is a reply to Mr. Beck's latest satanic epistle.

RECALL COMMITTEE

The recall is a method of popular impeachment to remove public officers who have gone contrary to public opinion and ignored the public welfare. There have been cases both of its desirable and of

³⁷ *Ibid.*, p. 177, by permission of The Macmillan Company, publisher.

³⁸ Mr. Beck had questioned the war record of Mr. Morden, who had been active in the circulation of the recall petitions.

its undesirable use. The electorate is neither more nor less judicious and discriminating in the recall of officials than in their election. Showmanship and ballyhoo are as important here as in election campaigns.

One of the advantages claimed for the recall is that it permits the lengthening of terms of elective officers. Where terms are too short, an elective officer does not have sufficient time to put his policies into effect. Furthermore, too much time is spent in political work looking forward to the next election. Long terms have been avoided, however, on the ground that the risk of electing an unsatisfactory public servant is too great. He may be inefficient or unwilling to follow public opinion—grounds on which removal through legal channels cannot be made. The long term, with the safeguard of the recall, will function satisfactorily only if the use of the recall is not abused. If it is used for partisan political purposes, we have long terms in name but short terms in fact. Experience with the recall during the last forty years indicates that this possible weakness does not appear in actual practice.

Boston by charter amendment of 1909 established a modified or compromise system of recall to secure the advantage of both long terms and responsibility. The mayor was to be elected for four years, but the voters were given the power to terminate his tenure at the end of his second year in office. At the state election in November of his second year, the voters were asked whether they desired an election for mayor at the municipal election in the following January. If the majority of registered voters favored an election, the mayor vacated his office and a new election for a four-year term was held. Thus without any petition, the question of retiring the mayor automatically went on the ballot at the end of two years.³⁹

The recall was offered as a means of continuing popular control over men in public office. No longer would the statement that a political platform is a thing to get in on, but not to stand on, apply. If the candidate forgot his campaign promises after the election, he could be removed from office. The official would realize this situation and be more considerate of public opinion, public welfare, and the public interest. The recall would thus be valuable as a potential club to wield on recalcitrant officials. The recall, it is said,

³⁹ For this plan, see W. B. Munro (ed.), *op. cit.*, p. 46.

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places a premium upon good service, inspiring honest and efficient government. Cases in which its threatened use has caused councilmen to abandon measures which were objectionable to the people may be cited. The mere threat of a recall was sufficient to cause the council in Los Angeles to rescind a valuable franchise. When necessary, the recall has made it possible to proceed against unfaithful public servants. Two members of the city council of San Bernardino, California, who voted to let the public advertising to a firm that was not the lowest bidder, were recalled from office.⁴⁰

Public officials may fear the use of the recall and hence be unwilling to strike out on bold programs that may momentarily be unpopular. Examples can be given in which public officials would undoubtedly have been recalled had this weapon of democracy been available. Before the end of their term, however, the people appreciated their program and what they were trying to accomplish. Under the recall, it is said, the officer must consider the immediate effect and his possible removal by the people. It has been suggested that had this device been available, Abraham Lincoln would probably have been its victim when the clouds of unpopularity enveloped him at the time the Union tide was at low ebb. The longer term enabled him to justify his course of procedure.⁴¹

Minority groups have in some cases been able to control public officers by threatening to use the recall. Some humiliation, worry, and expense are involved in a recall campaign, and consequently it is an experience every public officer prefers to avoid. Completed petitions have sometimes been held in "cold storage" as a threat against an incumbent. Unquestionably such a situation will have a marked effect upon the behavior of a public official—and in some cases not for the better. It depends in part upon the group holding the petition. In any case, it seems doubtful whether, under such circumstances, a public official will exercise the freedom of action desired.

The recall may in some cases be used to favor the very group it was intended to control. Advocates of the recall said that it could

⁴⁰ See *ibid.*, chap. xii, for cases in which the recall was used against public officers who failed to follow public opinion.

⁴¹ See S. W. McCall, "Representative as Against Direct Democracy," 108 *Atlantic Monthly* 454 (Oct., 1911).

be used to remove an official who was too subservient to the interests—the public utilities, the contractors, etc. But in view of the large number of signatures required to bring about a recall election, people whose only interest is the “public welfare,” “honesty in public service,” or some such intangible thing will hesitate before undertaking the task. However, groups which have an economic interest at stake and stand to gain financially by the removal of a public official are ready to make use of this instrument. J. D. Barnett stated that of the 17 cases of recall elections held in Oregon up to 1915, at least five were brought about by persons who had an economic interest.⁴² It should be noted, moreover, that the petitions did not disclose the real reason for seeking the recall of the official.

The final question that arises in connection with the recall is whether the facts stated in the recall petition may be made the basis of a suit for libel and slander. Are such statements absolutely privileged on the same ground that allegations in judicial proceedings, either in pleadings or in affidavits, are absolutely privileged? The general view is that recall petitions are partially or qualifiedly privileged. If in signing a petition a citizen acts without malice and with a reasonable belief in the truth of the accusations, he is not subject to either civil or criminal prosecution for libel, even though the accusations are false. But such petitions are not absolutely privileged; and persons who sign their names thereto maliciously, knowing that the charges are false, are subject to suit for criminal libel.⁴³

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⁴² J. D. Barnett, *op. cit.*, pp. 191-218.

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Political Parties and Party Organization in Cities

PARTISANSHIP IN CITY ELECTIONS

It is generally conceded to be undesirable to have municipal campaigns waged on the basis of national campaign issues. As early as 1877, the commission appointed by the governor of New York to devise a plan for the government of cities stated that the introduction of state and national politics into municipal affairs was one of the causes of existing evils.¹ The commission stated that it considered parties to be desirable where general principles or methods of policy arose. "But," it said, "it is rare, indeed, that any such questions, or any upon which good men ought to differ, arise in connection with the conduct of municipal affairs. Good men cannot and do not differ as to whether municipal debt ought to be restricted, extravagance checked, and municipal affairs lodged in the hands of competent and faithful officers."

Mayor Matthews of Boston in his valedictory address to the members of the city council emphasized the same point. "Ninety-nine per cent," he said, "of all the questions that come before the City Council and the executive departments are questions of expenditure; there are practically no divisions of the City Council on party lines; and the contest in almost every case is between extravagance and economy, between expenditure and retrenchment, not between Democrats and Republicans."² "In the modern city," states Charles E. Merriam, "there is little left in local affairs of the national party

¹ *Report of Commission to Devise a Plan for the Government of Cities in the State of New York*, p. 13.

² N. Matthews, Jr., *The City Government of Boston*, p. 178.

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except a tradition and an appetite. The lines that divide men in national affairs do not run in the same direction in local questions, and the attempt to force them to do so has been a conspicuous failure in this country."³

In his lectures at Columbia University in 1907, Jeremiah W. Jenks made a plea for non-partisanship in municipal elections. He deplored the fact that national issues tend to obscure local ones, since for many persons the local problems are of much more importance than national issues. "It is likely," he said, "to make much more difference to me individually who is the next school-teacher that has charge of my children than who is the next President."⁴ H. C. Emery, in a lecture at Yale University in 1912, also made a plea for independent voting in municipal elections. In these elections, he said, "the question is frequently not so much a question of some policy of party government as the mere honest and efficient administration of municipal affairs. For a large part of these affairs the question of party allegiance is as little important as it would be in the choice of the officials of a corporation. The result is that the principle of men rather than measures, I think, applies primarily here. This is one of the reasons why it is so important to separate local elections from national elections in order that the voter may make his choice independently in the two cases."⁵

Brand Whitlock, former mayor of Toledo, said that if he were asked to pick out and designate the man who is responsible for the ills of our cities, he "would designate, not the boss, not the politician, not the lobbyist of the streetcar company, but instead the man who in municipal elections always votes the straight party ticket."⁶ The view has been expressed by Charles Evans Hughes that the intrusion of national party politics, with the divisions and cohesions caused by national party loyalties, into the affairs of cities is largely responsible for the inefficiency and corruption in municipal government and administration.⁷

³ C. E. Merriam, *Chicago*, p. 99.

⁴ Jeremiah W. Jenks, *The Principles of Politics*, p. 73.

⁵ H. C. Emery, *Politician, Party and People*, p. 64.

⁶ Brand Whitlock, "The Evil Influence of National Parties and Issues in Municipal Elections," *Conf. for Good City Govt.*, 1907, p. 193.

⁷ Charles Evans Hughes, *Conditions of Progress in Democratic Government*, pp. 111-112.

The statements quoted above emphasize that there is an evil effect in having municipal campaigns conducted along national party lines. Just what is the evil to which they refer? The evil lies in the fact that campaigns are not waged on the basis of municipal issues, and candidates are not elected because of their stand on such issues or because of their prospective ability to administer wisely and honestly the affairs of office. The voter "looks at political facts with his prejudices, not his eyes," and he votes his inherited partisanship rather than the dictates of his own judgment based upon an appraisal of the candidates and the issues.⁸ When municipal elections are conducted on a partisan basis, the election or defeat of candidates frequently depends only to a small degree upon local issues. If municipal and state elections are held on the same day this is especially true. A landslide in state or national elections will carry into office local candidates regardless of their ability or their stand on local issues. Even though local elections are held on different dates from state and national elections, the same principle applies, though to a lesser degree. For many people, party regularity is an important factor, regardless of the unit of government for which officers are being elected. And when revolts occur in local elections, it may be because of state or national developments. The defeat of Mayor Dickmann of St. Louis for reelection in 1941 was attributed by many to the attempt of the Democratic party in Missouri to prevent the seating of a Republican governor who had been elected by a small majority. Mayor Dickmann was reported in the press to have attributed his defeat to the Willkie "backwash" which had aroused the Republicans in the preceding November election.⁹ There were others, however, who believed that his defeat was justified on the basis of his record as a municipal administrator. Where local officers are elected as Republicans or Democrats, party affiliation is too often a determining factor in the outcome. Since this is true, the incentive properly to administer the affairs of local public office is not as great as it should be.

But it should be pointed out that the voter in municipal elections who supports the candidates bearing his national party label should

⁸ See R. E. Cushman, "Non-Partisan Nominations and Elections," 106 *Annals of the American Academy of Political and Social Science* 83 (Mar., 1923).

⁹ 37 *Time* 19 (April 14, 1941).

not be accused of blind loyalty. As long as municipal elections are conducted on a partisan basis, there is some reason for supporting the candidates of the party he wants to have in the national elections. Whether the individual voter reasons this out in deciding how he will vote may be questioned, but that this connection exists seems obvious; hence there may be some logic in voting your national party allegiance in city elections. While it may not be the best decision as regards the welfare of your city, it may be best from the point of view of your party's welfare in the national elections. Professor Emery said in his lectures at Yale University in 1912:

If, for instance, the Democratic organization in a given city is closely connected with the state organization and that in turn with the national, the voter must face the question of how the effect of his vote will be felt in the wider field of national politics. A local election may come on the eve of a great and perhaps very doubtful national election. The voter may feel that the local machine of his own party ought to be disrupted, but this disruption might mean a loss of party strength at the national election in which he whole-heartedly supports his party. If he votes on the immediate question of local government alone, he will vote against his own party. If he is primarily concerned with the success of a certain program in national affairs he may conscientiously decide that for the moment the problem of good local government must be sacrificed to some more pressing and far-reaching issue.¹⁰

Professor Emery was not justifying such action but was rather explaining why in many cases people do not vote independently on local issues when national party designations are used in municipal elections. He was explaining why undesirable local machines are allowed to continue in control of municipal governments in order not to endanger the party strength in the state and national field. And obviously, municipal patronage is of value for building up the party's strength in the state and nation.

This issue was clearly stated in the New York mayoralty campaign of 1945. Jonah G. Goldstein, Republican, Liberal, and Fusion candidate for mayor, denounced the injection of state and national issues into the municipal campaign.¹¹ He quoted President Franklin

¹⁰ H. C. Emery, *op. cit.*, p. 68.

¹¹ *New York Times*, Oct. 3, 1945.

D. Roosevelt as having said in 1941: "The fact that the city's election has no relationship to national policies but is confined to civic policies is attested by the fact that the Constitution of the State provides for municipal elections in off-years when neither a Governor nor a President nor members of the House of Representatives or Senate of the United States are to be chosen." Judge Goldstein then went on to say: "There is no Republican way and no Democratic way of cleaning streets, or keeping up our hospital and health services, taking care of the parks, teaching our children or performing any of the city government functions." Senator Robert F. Wagner, in urging the election of William O'Dwyer, Democratic and American Labor party nominee for mayor, answered this argument of Judge Goldstein by saying: "If he [Judge Goldstein] thinks that this great city can separate its destiny and welfare from the destiny and welfare of America as a whole, can isolate itself from national events, then he lacks the vision and outlook required to be Mayor of New York. . . . We all know that national strength is the sum total of strength in our cities and States. A Republican victory in the city of New York would strengthen the Republican party everywhere. A Democratic victory in the city of New York will strengthen the Democratic party everywhere. *And that is the first big issue in this municipal campaign.*"¹² We have here both a frank statement that the outcome of a municipal election may affect the destiny of the party in state and national elections, and an appeal for the support of a candidate for that reason.

Where national party lines are followed in cities, the voter, as Brand Whitlock has pointed out, does not look at political facts; he looks at political theories which do not concern his city as a city.

[He] votes for a man for the city council who, if he were in Congress, would vote this way or that on the tariff; or for a mayor who, if he were President, would do this thing or that thing with reference to national expansion or the currency question or something of that sort; but not being concerned in any of these questions as a city official, he gives the street-car company or the gas company a new franchise, and the party man has foolishly bartered away his own rights, and his neighbor's rights, and his children's rights, for half a century. He thought, perhaps, he was

¹² *Ibid.*, Oct. 14, 1945. Italics are the present author's.

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voting for Lincoln or Jefferson, but in reality he was voting for some political boss or for some public-service corporation.¹³

In the speech referred to in the preceding paragraph, Senator Wagner urged the voters to elect the Democratic candidate for mayor of New York because that party, he said, was committed to the "maintenance of world peace, jobs and prosperity, with special emphasis upon the needs of returning veterans, development of our productive capacity to bring a higher standard of living, liberalization of social security, slum clearance and low-rent housing, speeding up reconversion, keeping the cost of living on an even keel," etc.¹⁴ Regardless of how laudable these objectives were, they would be carried out at the state and federal level and not by the city of New York.

Three methods have been suggested for eliminating national partisanship from city elections. The first is the abolition of political parties in municipal politics—the non-partisan movement. Two questions arise regarding non-partisan elections. The first is whether parties should be eliminated, even in municipal affairs. The view taken by some writers is that if city officers are not policy-determining and if city government is a matter of business efficiency, municipal officers should be appointed and not elected. If they are policy-determining, they should be elected, and in their election a political party is an essential instrument.

Some writers hold that political parties in cities are inevitable. Says Norman Thomas:

Theoretically—perhaps—we might imagine a city of seven million people voting wisely regardless of party. In practical life the picture is impossible. A little reflection compels us to expect what the history of modern times in every country confirms; that politics is and must be an occupation requiring time, an exacting vocation if not a full-time profession. The more complex a community is the greater is the need of the unifying influence of a political party. . . . Democracy, in brief, requires government by parties because the citizens are too numerous, too ill-informed and too preoccupied to come together spontaneously to choose

¹³ Brand Whitlock, *op. cit.*

¹⁴ *New York Times*, Oct. 14, 1945.

the policies and leaders they wish to prevail. Political machinery has to be worked. The parties work it.¹⁵

While admitting that there is no Republican or Democratic way of running a city, Gilbert Bettman, former attorney-general of Ohio, has branded this angle of approach as "politically puerile." According to him:

The answer is that there are differences of opinion in a body politic as to how things should be built and operated. Those differences run from streets to tariffs, and those differences as to measures and men have to be worked out in a large body politic, be it city, state or nation—through the agencies of political parties; and in those countries where rule by the majority is attained—through two parties—one on opposition to watch and one in control to govern.¹⁶

There are some writers who go further than defending parties in city elections; they also defend national party participation in such elections. Charles A. Beard, writing in 1917, stated that "non-partisanship has not worked, does not work, and will not work in any major city in the United States." He went on to say: "Not a single one of our really serious municipal questions—poverty, high cost of living, overcrowding, unemployment, low standards of life, physical degeneracy—can be solved, can be even approached without the cooperation of the state and national government, and the solution of these problems calls for state and national parties."¹⁷ While admitting that it was "ideally desirable that the voter should be left free to choose the candidates of one party in local elections and the candidates of the other party in national elections," Woodrow Wilson stated as his opinion that this was an unattainable ideal. "We have," he said, "hopefully made a score of efforts to obtain 'non-partisan' local action. But such efforts always in the long run fail."¹⁸

The close relationship of local, state, and federal governments has been pointed out in earlier chapters. The city is interested in

¹⁵ Norman Thomas and Paul Blanshard, *What's the Matter with New York*, p. 14, by permission of The Macmillan Company, publisher.

¹⁶ 42 *Am. City* 175 (Jan., 1930).

¹⁷ Charles A. Beard, "Political Parties in City Government," 6 *Nat. Mun. Rev.* 201 (Mar., 1917).

¹⁸ Woodrow Wilson, *Constitutional Government in the United States*, pp. 207-208.

developments both at the state capital and in Washington. There has been a great increase in federal activities that affect cities. And despite the progress made by constitutional home rule, city-state relations are such that cities are affected by the attitude of the legislative and executive branches of the state government. Despite this situation, the desirability of avoiding the domination of city elections by national party issues remains.

Those who argue for non-partisanship in municipal elections do so on the ground that it is best for municipal government. O. Garfield Jones has advanced the argument that it is a disadvantage to the national party to participate in municipal politics. He quotes Boies Penrose to the effect that "party efficiency and capacity for general public service increases in the ratio in which it disentangles itself from municipal politics." Party principles and party welfare, Penrose believed, were of little or no consideration to municipal political machines which exist solely to promote selfish interests. Professor Jones agrees with this view and expresses the opinion—and hope—that when parties become convinced that the national party's interference in municipal elections is as bad for the national party organization as it is for the city government, they will prefer to stay out of local factional fights.¹⁹ Undoubtedly the welfare of the national party is jeopardized by local internal factional fights, and the national organization attempts to prevent such conflicts whenever possible. Whether the detriment to the national organization from such conflicts is greater than the advantages the party derives from partisan city elections is debatable. Another writer has taken the view that the "loosening of the bonds of national party affiliations tends to effect a realignment of the voters on the basis of racial, religious and class differences, since men whose interests are similar or who are otherwise bound by close ties tend to gravitate together."²⁰

Non-partisanship in city elections unquestionably had its origin in a desire to eliminate national parties from city politics. Today many advocates of non-partisan elections are interested not in non-

¹⁹ O. Garfield Jones, "National Parties in Municipal Politics," 18 *Nat. Mun. Rev.* 609 (Oct., 1929).

²⁰ David Stoffer, "Parties in Non-Partisan Boston," 12 *Nat. Mun. Rev.* 85 (Feb., 1923).

partisanship but rather in non-national and non-state partisanship. The object sought is, in a sense, home rule in municipal politics. Walter J. Millard, taking this view, has defined a non-partisan as "one who believes it desirable that a group of likeminded voters should have an equal chance with other such groups, especially in the conduct of elections, to attract votes and have those votes produce their due effect upon a given political unit, *regardless of the age or previous history of any of the groups*. Though the non-partisan ballot is without labels or party designations it is not intended to lead to the abolition of parties."²¹ This is a broader definition of non-partisanship than a strict use of the term would justify. When so defined, most people would accept non-partisanship in municipal elections as a desirable thing.

There is also the question as to whether the use of non-partisan ballots has eliminated partisanship in cities. Though the name and party emblem are removed from the ballot, this does not insure real non-partisanship; party organizations may and often do step in and endorse candidates, and they may instruct their members how to vote. Parties make their nominations before the date of the non-partisan primary, so the primary becomes in fact a preliminary election.²² This seems almost inevitable in the larger cities; in the smaller cities, it is less likely to exist. Genuine non-partisanship in villages and small cities is more practicable.

Chicago furnishes an illustration of non-partisanship in form and partisanship in fact. Although under the Illinois law the mayor of Chicago is elected on a partisan basis, the members of the council are elected without party designation. In fact, however, the party affiliation of candidates for the council is generally known—and is often an important factor in their election. After an election of councilmen, the Chicago papers refer to the number of Democrats and Republicans elected. The *Chicago Tribune*, in reporting the election of 1933, said: "Although the aldermanic election is non-partisan, the tabulation of defeats and runoffs appeared significant to city hall observers. . . . Comment from the political observers was that the Democrats had strengthened their hold on the city's

²¹ 42 *Am. City* 181 (Mar., 1930).

²² See, for example, Victor Rosewater, "Omaha's Experience with the Commission Plan," 10 *Nat. Mun. Rev.* 281 (May, 1921).

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legislative chamber. They identified as Democrats twelve of the thirteen newcomers who were given seats in the council chamber in yesterday's election."²³

That the same situation may develop in smaller cities is shown by the following notice which was published in a newspaper in a downstate Illinois city of 15,000 population:

THE STATUTE PROVIDES

the form of ballot to be used by cities under the Commission Form of Government and that the ballot

"shall have no party, platform or principle designated or appellation or mark whatever, nor shall any circle be printed at the head of the ballot."

In conformity with the Statute and the spirit of the Act creating the Commission Form of Government, the undersigned request the many workers of both the Republican and Democratic parties to resent any attempt on the part of any candidate, whatever his political allegiance, to inject partisan politics into the City Election to be held April 21st, 1921.

We further urge each and every worker of both parties to select the candidates of their choice, regardless of politics, for each city office to be filled and to work diligently to procure a large vote at the City Election.

The notice was signed by the chairman and secretary of both the Democratic and the Republican township committees. It was published to counteract partisan appeals for votes which were actually being made. It indicates the difficulty of securing non-partisan elections by mere legislative act.

Of the two other suggestions that have been made for meeting the problem of partisanship in city politics, one involves the creation of independent municipal parties whose policies would concern municipal questions only. "National parties for national issues, municipal parties for municipal affairs," is the slogan of those advocating this method of solving the problem.²⁴ One difficulty that is met is that there is little or no connection between the city government and other local governments, such as the county, the township, the park

²³ The *Chicago Tribune*, March 1, 1933. Candidates receiving a majority at the first election are declared elected; in wards where no candidate receives a majority a run-off is held.

²⁴ R. T. Elv, *The Coming City*, p. 82.

district, or the sanitary district. Logically, it is said, separate parties would be needed for each of these governmental units.²⁵

The third suggestion which has been made regarding partisanship in cities is that national parties adopt municipal programs in municipal matters. The view taken by advocates of this plan is that independent municipal parties are confronted with almost insurmountable difficulties, and that the object desired can be accomplished by the national parties' adoption of municipal programs.²⁶

Of the three proposals discussed above, non-partisanship in municipal elections has made the greatest progress. This is especially true of commission and manager cities. Several large cities, including Detroit, Los Angeles, Milwaukee, Minneapolis, Kansas City, and Chicago (for members of the city council only), use non-partisan elections. A recent study of 2033 cities of over 5000 population showed that non-partisan elections were used in 43.6 per cent of the mayor and council-governed cities, in 76 per cent of the commission-governed, and in 83.5 per cent of the council-manager cities.²⁷ It should be noted that only 16.5 per cent of the council-manager cities use partisan elections—and it is this form of government which at the present time is showing the most new adoptions.

Municipal parties have been formed in several cities, especially in villages and small cities. They take such names as the Conservative, Progressive, Liberal, People's, Citizen's, Anti-Saloon, and Labor parties. Strong citizen organizations, such as the Charter Committee in Cincinnati, which secured the adoption of the council-manager plan, illustrate the possibilities of non-partisanship in local government through the use of municipal parties or organizations entirely divorced from national parties. This citizen group has in effect developed into a municipal party that has secured the election of members of the council and supported them after their election. It has been effective because it has organized, it has secured leadership, and it has worked to secure the election of candidates to office. As pointed out by Charles P. Taft,

²⁵ M. D. Hull, "The Non-Partisan Ballot in Municipal Elections," 6 *Nat. Mun. Rev.* 219 (Mar., 1917).

²⁶ For further elaboration of this proposal, see M. R. Maltbie, "Municipal Political Parties," *Conf. for Good City Govt.*, 1907, p. 226.

²⁷ *Municipal Year Book*, 1946, p. 46.

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it has established and supported good local government without yielding to either national party.²⁸

PARTY ORGANIZATION IN CITIES

For the purpose of accomplishing their object, namely, the election of their candidates to office, and thus securing control of the machinery of government, political parties provide an organization. Through the party organization the party campaign is conducted, and money is raised and spent to gain public support for the candidates. There is a hierarchy of political organization, at the base of which is the precinct committeeman or committee in each of the 130,000 precincts in the United States. Above the precinct committee is the ward organization, then the city committee or organization; above this the organization for the county, for the state legislative and congressional districts; the state central or executive committee of the party at the apex of the party organization within the state; and the National Committee for the country as a whole. The present discussion will be limited to party organization in cities.²⁹

The precinct committee or committeeman at the base of the party organization has been referred to as the "unit cell in the party structure." As has been pointed out previously, the precinct usually contains about 600 voters, the minimum and maximum number being fixed by law in most states. Where there is a committee rather than a single committeeman, one member usually dominates. In about half the states a man and woman are elected; this has developed since the enfranchisement of women. In any case, there are several party workers who are ready to assist the committee or committeeman. In the larger cities these workers are often known as "heelers."

In the majority of states the committeeman is elected at the primary, generally for a two-year term. In some cases, as in New York City and Chicago, the precinct committeeman is appointed by the ward or district leader. Even where elected, he is virtually

²⁸ C. P. Taft, *City Management: The Cincinnati Experiment*, p. 5.

²⁹ In about three-fourths of the states, the composition, method of selection, and duties of party committees are now regulated by statute; in the other states these matters are left to the party.

selected by the party leaders because there is little competition for the place. It has been estimated that 90 per cent of the candidates for precinct committeeman are unopposed in the primary. The average voter knows little or nothing of the office and its duties and shows little interest in the selection of the committeeman. The attempt to democratize party machinery by making the office elective has failed.

The committeemen are in charge of the party's affairs in the precinct. If they succeed in getting out a big vote and carrying their precinct for the party, they have accomplished their purpose. Among their generally accepted official duties are "assisting aliens to procure naturalization papers, registration and enrollment, conducting campaigns, getting out the maximum vote at all primaries and elections, providing watchers, nominating polling clerks and other election officials, watching the count, and hurrying reports of the result to headquarters." A big party vote is the goal of the precinct committeeman. In some cases he may even stoop to ballot-box stuffing to secure this. If colonization and repeating are used to increase the party vote, he supervises this work.

A large number of the precinct committeemen are officeholders, and they realize that they hold office because of their ability to carry their precinct. The Chicago political leader, in addressing his precinct captains, was merely stating what is generally understood to be the rule, when he declared: "If any man does not carry his precinct on the thirteenth of April, he'll be fired on the fourteenth. . . . I believe that to the victor belong the spoils. He who contributes most to winning the elections ought to sit at the first table, and those who do less should sit at the second table. Any one of you who can come to me and show that he got more votes than someone else who has a better job can have that job."³⁰

Many of the social and charitable activities of the party which are undertaken to secure a favorable public opinion are carried out by the precinct committeeman. Merriam and Gosnell summarized a study of the political and social activities of 600 precinct captains in Chicago as follows:

The political and social activities of the precinct captains interviewed were varied. One-third had given rent and about the same proportion

³⁰ Quoted in C. H. Wooddy, *The Chicago Primary* of 1926 p. 8.

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had given juvenile guidance to some of their constituents. The giving of coal, the securing of bail, the granting of permits, and the making of contacts with social agencies were each listed in about two-fifths of the cases. Among the more common activities (listed in one-half or more of the cases) were: securing of medical care, attention to streets and alleys, securing of legal advice, adjustments of violations of traffic rules, securing of political or non-political jobs, giving of Christmas baskets, help in naturalization, adjustment of taxes and attendance at weddings.³¹

The precinct executive is the contact man between many of the poorer classes and the city government. To these people he is the government. As Frank R. Kent says,

If a boy breaks a window with a stone and gets into trouble with the police, the precinct executive goes to the front for him. If his father has a mixup about his water-rent bill, the precinct executive helps him straighten it out at the City Hall. If his mother gets a notice from the Health Department threatening her for leaving the garbage can on the pavement, the precinct executive smooths the thing out. If his big brother wants to get on the police force or in the fire department, the precinct executive shows him how to make his application and gets him his endorsements. If his uncle wants a job as street cleaner or watchman, or his aunt wants a place as charwoman, the precinct executive tries to get it for them.³²

The precinct captain is thus an important cog in the city political organization. The type of person holding the position and the methods he uses to win votes will vary, depending on the section of the city he serves. The problem presented to a precinct committeeman in a slum section in which a large percentage of the voters are foreign-born differs from that in a wealthy section. He will adapt his tactics to his constituents, doing the things which in that section will win votes. Securing a street light in front of the home of a constituent or fixing a traffic violation ticket may be

³¹ C. E. Merriam and H. F. Gosnell, *The American Party System*, 2nd ed., p. 70, by permission of The Macmillan Company, publisher. See also H. F. Gosnell, *Machine Politics: Chicago Model*, chap. iv, on the activities of precinct captains in Chicago.

³² F. R. Kent, *The Great Game of Politics* (1930), pp. 29-30. Also see J. T. Salter, "Party Organization in Philadelphia: The Ward Committeeman," 27 *Am. Pol. Sci. Rev.* 618 (Aug., 1933); W. S. Vare, *My Forty Years in Politics*, chap. ii; J. T. Salter, "Tony Nicollo," 22 *Yale Review* 770 (June, 1933).

the service desired and needed to win votes in one type of precinct; in another it may be social and charitable acts or the securing of work, either with the city or some private employer.³³

While there is great variation, the next step in party organization in cities is generally the ward committee. In smaller cities there is often no ward organization, and in other cities the ward committee is at the base of the party organization, there being no precinct organization. Where there is a ward organization, there is generally a committee composed of one or more precinct committeemen from each precinct. A ward committeeman is usually a promoted precinct officer. It has been estimated that eight out of ten ward executive officers are on the public payroll, with salaries from \$2000 to \$8000. In the average ward there are from 14 to 30 precincts, with 8400 to 18,000 voters in a ward.³⁴

Above the ward organization is the city or county committee. In larger cities the city committee is recognized as part of the party organization, but in the smaller places the county committee is the next step in the party organization. The precinct committeemen residing within the city limits often constitute the city committee; the county committee consists of all precinct committeemen in the county, including representatives of both urban and rural territory.³⁵ In some states, however, a city committee for the party is elected at the primary.

The organization of the Democratic party in New York, the Republican in Philadelphia, and both the Republican and Democratic in Chicago illustrates the way in which parties have been organized in large cities.

Tammany Hall

Tammany Hall, the Democratic organization in New York City, is one of the best-known and most successful political organizations in this country. Tammany Hall is limited to New York County, though close relations are maintained with the Democratic organiza-

³³ H. F. Gosnell, *op. cit.*, chaps. iii-iv.

³⁴ See F. R. Kent, *op. cit.*, chaps. vii, viii, xi. Also see H. F. Gosnell, *op. cit.*, chap. ii, entitled "You Can't Lick a Ward Boss."

³⁵ Charles Kettleborough, "Digest of Primary Election Laws," 106 *Annals of the American Academy of Political and Social Science* 234-242 (Mar., 1923).

tion in the Bronx and Kings.³⁶ The assembly district, of which there are 23 in New York County, is the territorial basis of the organization.³⁷ Delegates are selected in each assembly district by the Democratic voters to serve on a District General Committee. One delegate is selected for each 25 voters. This committee acts as the governing authority of the Democratic party in the assembly district. The committee selects a district leader or leaders. Although formerly the practice was to select a single leader, today the districts usually select from two to six leaders divided equally between men and women. One of these, however, is generally recognized as the district leader. The district leader appoints a precinct captain for each precinct.

A General Committee for the county, made up of the combined membership of the district committees, is the governing authority of the party within the county. The membership of this governing committee is now about 15,000 persons. A committee of this size is obviously too large to function efficiently, so an executive committee composed of 46 district leaders, one man and one woman from each assembly district, is selected to lead the work. The General Committee selects a chairman, treasurer, secretary, and several committees. The boss of Tammany Hall need not hold any of these party offices. He is generally recognized and accepted because of his political wisdom and power to control votes.

Philadelphia Republican Organization

The Republican party in Philadelphia uses the division, which corresponds to the precinct in other cities, as the unit of representation in the party organization. There are over 1200 divisions in the city, the number varying from four to 110 in each ward. The party members in each division elect, in a direct primary, two members to serve on a ward committee. In the wards where the organization is strong the ward leader virtually appoints these committeemen—"his support or opposition will defeat a candidate."³⁸

³⁶ Five counties make up New York City.

³⁷ On the organization of Tammany Hall, see R. C. Brooks, *Political Parties and Electoral Problems*, pp. 197 ff. Also see Roy V. Peel, "The Political Machine of New York City," 27 *Am. Pol. Sci. Rev.* 611 (Aug., 1933).

³⁸ J. T. Salter, "Party Organization in Philadelphia: The Ward Committeeman."

In each of the 50 wards of the city there is a ward organization. The authority is vested in a Ward Executive Committee composed of the district leader, selected by all the division leaders in the ward, and the two members from each division chosen by the Republican voters at the primary election. This Ward Executive Committee selects officers and committees to take the initiative in its work. It also selects one person to be a member of the Central Campaign Committee of the city. This individual becomes in effect the ward leader of the party. The 50 ward leaders thus constitute the Central Campaign Committee. As in the case of New York City, the boss does not necessarily hold any party office; William S. Vare, the Republican boss of Philadelphia, held neither party nor public office.

Party Organization in Chicago

The ward is the unit of party organization in Chicago. A ward committeeman is elected in the primary in each of the 50 wards for a two-year term by a direct vote of the party. This elective ward committeeman names the precinct committeemen for the precincts in his ward. The total number of precincts is now about 3000. The 50 elective ward committeemen compose the City Committee, which is the governing authority of the party. In voting on the City Committee, the vote of the members is proportioned to the party vote for governor in their ward.

In neither the Republican nor the Democratic parties in Chicago, however, has there been an accepted party organization as in the Republican party in Philadelphia and the Democratic party in New York. Rather there have been competing Republican organizations or factions, each covering most if not all of the city. The same has been true of the Democratic party. The party organization for these factions has been made up of the elected committeemen for the wards in which the faction is in control, with members added for wards where the faction is in the minority. Again in Chicago, as in New York and Philadelphia, the bosses of these factions or wings of the parties do not necessarily hold party office.

CONCLUSION

Most of the reforms in municipal organization, practice, and procedure which are advocated are based on the non-political and businesslike nature of the problems to be met in the American city. Extension of the merit system, centralized purchasing, the council-manager plan of government, and other improved administrative practices are based on the principle that the form should suit the function to be performed, that efficiency rather than partisanship should be the standard in municipal administration. If we are to profit fully from these improved administrative practices we must carry with them the non-partisan principle in elections. Where the manager plan has not been successful or the use of the merit system has been ineffective, the reason has in most cases been political interference. Improved administration and non-partisanship are closely related and the progress of each is dependent upon the other. Much emphasis has been and should be placed upon using experts in municipal service. The use of such experts is inconsistent with machine partisan politics. As stated by Leonard D. White, "Governmental problems have become intricate and even more insistent. They call for solution with the aid of science, not with the wisdom of a ward politician. . . . What the whole world is witnessing is the emergence of government by experts, by men and women who are trained technicians highly specialized to perform some service by scientific methods. It is indeed a fair question whether we shall not be forced to reinterpret American government as a means for utilizing the services of experts in the performance of ends democratically defined."³⁹ In that reinterpretation, non-partisan municipal elections should have an important place.⁴⁰

SUGGESTED READINGS

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³⁹ L. D. White, *The City Manager*, p. 295.

⁴⁰ For an excellent development of this point, see Ellen Deborah Ellis, "National Parties and Local Politics," 29 *Am. Pol. Sci. Rev.* 60 (Feb., 1935).

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The Invisible Government in Cities

It was in the New York Constitutional Convention of 1915 that Elihu Root made his oft-quoted statement about the system of "invisible government" in that state. He was referring to the power of party bosses or party leaders in the government of the state. In many American cities, especially in the larger ones, the system of invisible government must be considered if we are to appreciate the actual forces at work. We must consider not only what Lincoln Steffens referred to as the "paper government," but also this informal or invisible government. City charters and municipal ordinances must be interpreted with the power and working of the machine and boss in mind. For, as McQuillin said, "the everyday working of community government is something quite apart from political doctrines, legal theories, the charter and applicable laws."¹

The organization of political parties has been discussed in the preceding chapter. The party committees provided for by state law or party rule have been mentioned. The persons who hold party positions as precinct and ward leaders and city and county chairmen and members of committees are often referred to as the machine. In actual practice certain individuals play a more important role in the party organization. This may be because of greater interest or because of superior ability—possibly both. This inner circle who dominate the machine are generally referred to as the "ring." In the ring there is usually one outstanding person who dominates the action of the party. This individual may hold neither party nor political office; he is the political boss.

¹ E. McQuillin, *The Law of Municipal Corporations*, vol. 1, sec. 116.

In many American cities the boss and his machine are the determining factors in municipal elections. Their strength is such that they can make or break candidates for public office. The result is, as stated by Lord Bryce, that while in our cities we have democracy in theory, we have oligarchy in fact, an oligarchy of politicians.² Or, as William B. Munro expressed it, democracy in the American city "is the rule of the few who exercise it in the name of the people."³ Because of the working of political machines, government of, by, and for the people, as applied to the American city, may become a farce.

BOSSSES AS POLITICAL BROKERS

The position of the boss is made possible by the stakes available in the American city. Were these stakes not available the machine could not exist, for, as Professor Munro says, "a political machine, like Napoleon's army, 'marches on its stomach.'"⁴ One of the stakes is the possible favors to be secured by business men. There are franchises for street railways and bus lines, pier leases, contracts for materials and for public funds, and the adjustment of assessment valuation. While serving the interests, however, the boss and the machine attempt to give the public the impression that they are against "big business" and are looking out for the "little fellow"—the forgotten man whose vote counts. Publicly they denounce and privately they serve.⁵

The boss assumes the position of a broker in the governmental scheme.⁶ He "sells" to the electorate the government which grants these privileges to the few. Those seeking special privileges from the city government use the boss as a broker to continue in power a government which grants these privileges for an inadequate public consideration. A brokerage fee must be paid to the broker, namely, the boss.⁷ There has developed what Charles E. Merriam refers to

² James Bryce, *Modern Democracies*, vol. 2, chaps. xl, lxxx.

³ W. B. Munro, *Personality in Politics*, chap. iii.

⁴ *Ibid.*, chap. ii.

⁵ C. E. Merriam and H. F. Gosnell, *The American Party System*, p. 176.

⁶ See A. L. Lowell, *Public Opinion and Popular Government*, p. 105.

⁷ The forms in which this fee is paid, such as campaign contributions, giving work to persons recommended by the boss, etc., will be discussed later.

as the alliance of the underworld of politics with the upper world of business. The man who can control and determine where public funds will be deposited is able to deal with bankers. If he can control the machinery of taxation, there are many in the upper world of business who are ready to deal with him. If he can control the city council in their relations with public utilities, this may result "in an offensive and defensive alliance for the mutual interest of the high contracting parties."⁸ It is this situation which Lincoln Steffens referred to as "the government of the people, by the rascals, for the rich." He declared that municipal government in this country "represents the organized evils of a privileged class," and that political corruption is not political, but business.⁹

In considering the use of political machines by business to secure special privileges from city governments, the question arises as to whether the egg or the chicken came first—whether the upper world of business corrupts the city government to secure privileges, or is the victim of blackmail.¹⁰ Many cases of both types of corruption have probably occurred. "Strike bills" and "sandbaggers" have been introduced in state legislatures and city councils which, in self-defense, business has been forced to kill by using the boss and the machine. Such services, of course, are rendered only for a consideration.

Regardless of which is the cause and which the effect, that this relationship between politics and business exists in many cities seems obvious. This is one of the things that makes the position of the political boss possible. Brand Whitlock summarized the position held by the boss in our political system as follows: "He is not in politics for principle; he is not always in politics for politics; he is in politics for business. He wants something to sell, something for which in certain quarters there is a demand, something for which a certain few will pay high—that is, privilege."¹¹

⁸ C. E. Merriam, *Chicago*, pp. 51-53.

⁹ L. Steffens, *Autobiography*, vol. 1, pp. 400, 413. Professor Munro has stated that "wealth has probably had much more to do with bossism than has poverty." W. B. Munro, *op. cit.*, chap. ii. Also see Ben B. Lindsey and H. J. O'Higgins, *The Beast*, chap. iv.

¹⁰ See C. E. Merriam, *op. cit.*, pp. 51-53, for an excellent discussion of this question.

¹¹ Brand Whitlock, in *Conf. for Good City Govt.*, 1907, p. 199.

The impression should not be gained that it is only big business that seeks favors from the hands of the government and finds using the boss to be advantageous. The pushcart peddler, the speeder, and the man seeking appointment to a petty office, such as an election judge, are motivated by the same urge as the business man seeking the streetcar franchise—special privilege. The boss system is not a problem of rich or poor; “after all, men really are seeking favors and adjustments through their government differing more in degree than in kind.”¹² Says Murray Seasongood, former mayor of Cincinnati:

It is assumed that everyone wants something. Even the strictly honorable want honors. In the list of illegitimate favors are to be counted: unconscionable grants to public utilities; undeserved deposits to friendly banks; low valuation for taxation to large corporations and individuals with a pull; a complaisant building inspector; delinquent taxes allowed to remain delinquent; appropriation for public purposes of property no longer desired by the owner at a price far in excess of actual value. For the less powerful, there are grants of market or parking privileges, poor relief, indigent soldier burials, taking care of traffic citations, lending dogs from the dog pound, and so on, down to the right of unmolested, profitable street-begging.¹³

PATRONAGE AND POLITICAL MACHINES

The second important privilege on the list of the boss is election or appointment to public office. Public office, whether elective or appointive, seems to have a special allurements for certain people. The boss and his machine so control the political system in our cities that appointment or election to these positions is the reward of political success, and also the chief means used by the machine for prolonging the system. Murray Seasongood places patronage “first and foremost” among the methods used by political machines to win elections and thus retain control of the government. “A horde of office-holders is recruited primarily for vote-getting strength,” he says. “Offices are created and multiplied wherever possible. This office-holding group, with its families and connections, often is

¹² C. E. Merriam, *op. cit.*, p. 232.

¹³ Murray Seasongood, *How Political Gangs Work* (pamphlet), reprinted by the National Municipal League from *The Harvard Graduate Magazine*, 1932.

enough, of itself, to make sure of political success." The officeholder must do more, however, than deliver his own vote and that of his family. "The job-holder must produce votes. His job depends on the showing he can make. . . . Hence, complete subserviency and an almost feudal loyalty to the boss result."¹⁴

It seems unfortunate that a man's ability to do the work in an appointive public position is a less important factor in his appointment than the votes he can control; but a party wants to win elections rather than be praised in editorials and by speakers at luncheon clubs and reform meetings. The machine would, of course, like to have both; but if a choice must be made it prefers the winning of elections. Appointment of men on the basis of their ability to carry their precinct in an election may not be good public administration, but it is good politics. The ideal situation would be for elections to be determined on the basis of "efficient administration" or "good government"; but in too many cities this is not the determining factor. Judicious (from the point of view of the party) use of patronage is one of the means adopted by a political machine to win elections.

The man or woman who is given a public position, however minor it may be, can be counted on to work for the party.¹⁵ The boss realizes this and tries to take care of his precinct executives, his ward executives, his district leaders, the members of party committees, and, as far as possible, his henchmen. This is the reason they work for the party—privilege—in this case a position in the public service.

It has been estimated that in a city of between 500,000 and 1,000,000 population there will be 500 to 1000 precinct executives, 20 to 40 ward executives, 10 to 20 district leaders, plus many party workers, to be cared for. In a city of 750,000 population there are approximately 10,000 municipal jobs. Some of these are unim-

¹⁴ *Ibid.* On this question, see C. H. Woody, *The Chicago Primary of 1926*, p. 8. Frank R. Kent states: "Placing just as much of his machine as he possibly can on the payroll is the primary purpose of the boss." F. R. Kent, *The Great Game of Politics*, p. 103.

¹⁵ In Atlanta, Georgia, where only 8000 to 14,000 usually vote, it has been estimated by the League of Women Voters that city and county employees control about 10,000 votes. E. Raoul, "The Graft Situation in Atlanta," 19 *Nat. Mun. Rev.* 809 (Dec., 1930).

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portant, but a minor party worker or henchman does not expect much. In so far as not prohibited by civil service laws, these jobs will be given to loyal party workers. "To the victor belong the spoils" is still accepted as good political dogma by municipal bosses. "The machine, in fact, is made up of job-holders—big and little."¹⁶

Except where civil service rules exist—and where they cannot be manipulated by the politicians—the boss is influential in determining who shall be appointed to the public service. The appointing authority knows that the boss has been largely responsible for his election—in fact, it is the boss who makes and breaks mayors. The boss is especially interested in the selection of the heads of those departments in which there are a great many positions to be filled. The department of street cleaning and the office of superintendent of buildings offer great opportunities for patronage and are often controlled by the boss. In this respect they correspond to the Post Office Department in our federal service.

As might be expected, bosses have opposed the merit system. It has been one of the most serious obstacles to building up an effective, smooth-functioning political machine. George Washington Plunkitt, district leader of Tammany Hall, branded the civil service law as "the biggest fraud of the age. It is the curse of the nation." He expressed his philosophy of appointment to office as follows:

What did the people mean when they voted for Tammany? What is representative government, anyhow? Is it all a fake that this is a government of the people, by the people and for the people? If it isn't a fake, then why isn't the people's voice obeyed and Tammany men put into office? When the people elected Tammany, they knew just what they were doin'. We didn't put up any false pretences, we didn't go in for humbug civil service and all that rot. We stood as we have always stood, for rewardin' the men that won the victory. They call that the spoils system. All right, Tammany is for the spoils system, and when we go in we fire every anti-Tammany man from office that can be fired under the law.¹⁷

Richard Croker, Tammany boss, was also a believer in the spoils system. During the Mazet investigation he expressed his opinion of the merit system as follows:

¹⁶ F. R. Kent, *op. cit.*, p. 98.

¹⁷ W. L. Riordon, *Plunkitt of Tammany Hall*, p. 22, by permission of Doubleday Doran & Company, Inc.

MR. MOSS: That is the theory of the city government right through; that the organization in control should have all the offices in every department?

MR. CROKER: Yes, sir.

MR. MOSS: Judicial, executive, administrative and everything?

MR. CROKER: Yes, sir, that is what I believe the people voted our ticket for.

Later on in the proceedings Mr. Croker said: "I think the city would be better off without civil service. . . . I think it is an obstruction to city government."¹⁸

Civil service laws have not taken all the patronage away from the control of the boss. This may be illustrated by the New York law which states that "appointments and promotions in the civil service of the state, and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained as far as practicable by examinations which, so far as practicable, shall be competitive." But, as pointed out by Thomas and Blanshard in their study of the government of New York City in 1932, there were at that time many employees who were not subject to the law. The mayor and other elected officials, and the heads of all departments—244 in all—were in the unclassified service. They received \$3,000,000 a year, or an average of over \$12,000 each. In these positions were found district leaders and other outstanding party workers. Below these there were 900 employees in the "exempt class," such as secretaries and deputies, receiving \$6,700,000 a year, or over \$7400 each. Deserving party workers were taken care of in these places. Then there was a non-competitive class of 11,250 employees. Scrubwomen, orderlies, and untrained nurses were in this class. They submitted a record of their experience, but "usually it is only a formality." These employees received about \$10,000,000 a year. "In practice they are almost as dependent upon political favoritism as their overlords. They fawn upon the district leaders and work for the organization ticket with the desperate earnestness of men whose bread is at stake." Finally, there were 27,250 laborers, whose only examination was a physical one, and "who are allegedly employed by the city in the order of their application. In practice these 'laborers'

¹⁸ *Mazet Investigation*, vol. 1, pp. 345, 554, quoted in L. Stoddard, *Master of Manhattan*, p. 143.

sometimes include typists and clerks squeezed in by their political friends after failure to pass examinations in their rightful class."¹⁹

The New York law provides that appointment in the classified service be made from one of the three highest on the list. This rule has been used to evade the spirit of the law. Though the employees are selected on a merit basis, the department head is still political and "his recommendations for promotion may be based on partisan bias. Many of the departments where competitive examinations are supposed to rule are rotten with favoritism."²⁰ It should be noted that the statements quoted above were made in 1932; great improvement has been made in New York City since then, especially under the La Guardia administration. But the problem still exists in all our cities, the variation being one of degree.

Patronage is so valuable in building up a political machine that the extension of the merit system is usually opposed by the politicians. When the machine in a given city is no longer able to prevent the adoption of the merit system of selecting employees, its first step is to save as much as possible by limiting the scope of the law, exempting as many employees as possible. The next step is to devise methods of evading the civil service laws so as to preserve as much patronage as possible for the machine. One of the methods used is temporary appointments. Civil service laws generally provide that where there is no list of eligibles, temporary appointments may be made to prevent the stoppage of public business. By avoiding having a list of eligibles, temporary appointments are permitted; and by repeated reappointments the merit system can be evaded. V. O. Key in his study of this problem pointed out that, in 1931, 61.2 per cent of the total payroll in the West Chicago Park System was paid to temporary appointees. He went on to summarize this situation in other jurisdictions, as follows:

About 1900 of the 4500 Cook County (Chicago), Illinois, jobs are subject to the merit laws. During 1928 at least 40 per cent of these positions were filled by temporary appointees. In 1923 approximately 5000 of the 22,000 positions in the Chicago classified service were filled by temporaries. During the Cermak administration in Chicago the general trend in

¹⁹ Norman Thomas and Paul Blanshard, *What's the Matter with New York*, p. 37, by permission of The Macmillan Company, publisher.

²⁰ *Ibid.*

the number of temporaries was upward, with aperiodic fluctuations nicely synchronized with the occurrence of elections. The total number of temporary employees was reliably estimated at between five and six thousand. In Cleveland in 1922 it was found that more than 2000 of the 5000 positions subject to examinations were occupied by "thirty-day" appointees. The practice was carried to its logical conclusion in Kansas City, where at one time all positions in the city service were held by temporary appointees. In Cuyahoga County (Cleveland), Ohio, in 1929, 58 per cent of the county's 1466 positions were either exempt, unclassified, or filled by temporaries. By renewals these positions become in effect permanent, at least for the duration of the party's power.²¹

Other means have been used by political machines to evade civil service laws and thus diminish the force of the blow at patronage made by the merit system. By appointing the "right type" of person to the civil service commission—men who are willing to cooperate in evading the merit system—the mayor can impair its effectiveness and save some patronage for the machine. And the council can, if necessary, make inadequate appropriations for the commission and prevent it from doing its work effectively. Appointments are so valuable in building up a political machine and controlling city elections that control over patronage will not be given up without a fight. Though the merit system has weakened the control of the boss over this type of special privilege—positions in the public service—he has found ways by which he can still have some control over appointments.

"POLITICAL" APPOINTMENTS IN INDUSTRY

Appointment in the public service is not the only patronage available for the boss in rewarding party workers. There are jobs with public service corporations or private business concerns which may be secured by the boss for his workers. This is a means by which the upper world of business may repay him for services rendered and privileges received. Paving contractors; dealers in coal, fire-fighting apparatus, and street cleaning machinery; and street railway, bus, telephone, gas, electric lighting and taxicab

²¹ V. O. Key, "Methods of Evasion of Civil Service Laws," 15 *Southwestern Soc. Sci. Quar.* 337 (Mar., 1935).

companies, as well as banks, hotels, office buildings, and even factories, are fertile fields in which the boss may find employment for a deserving party worker.²² As illustrative of this practice, Frank R. Kent states that in one of the big office buildings in Baltimore, "every one of the thirty charwomen, the eight elevator girls, the night watchmen and the superintendent were all put on their jobs by 'Frank' Kelly, on recommendation from ward executives, to whom they were recommended by precinct executives. In New York, Chicago, Philadelphia, and other cities, many jobs of this sort are filled with machine people."²³ In writing of her experiences at Hull House, Jane Addams gives an excellent picture of the technique used by the machine in gaining votes through patronage. "We soon discovered," she says, "that approximately one out of every five voters in the nineteenth ward at that time held a job dependent upon the good will of the alderman." This, she states, was possible because of the absence of civil service rules. She goes on to point out that unofficial patronage was also of great value in creating good will and support for the party. "The alderman was even more fortunate in finding places with the franchise-seeking corporations; it took us some time to understand why so large a proportion of our neighbors were street car employees and why we had such a large club composed solely of telephone girls."²⁴

Why do business concerns permit such interference by the boss? It is because they realize the advantage of having the good will of him and the machine in dealing with the public authorities. They appreciate his value when they seek favors or special privileges from the city government. A timely word from the boss at the right place will turn the trick. Why? Because through the political organization which he has built up he controls the machinery of government. He has built up such a system through the use of patronage, both public and private. In permitting the boss to place some of his party workers on their payroll they are paying their brokerage fee for services rendered, namely, the securing of special privileges for them. Unquestionably it is better business for a company which comes into close contact with the city government

²² See W. B. Munro, *op. cit.*, chap. ii.

²³ F. R. Kent, *op. cit.*, p. 37.

²⁴ Jane Addams, *Twenty Years at Hull House*, p. 316.

to give an incompetent henchman a job now and then than to gain the ill will of the boss.²⁵ "I can always get a job for a deservin' man," stated Plunkitt of Tammany Hall. "I make it a point to keep on the track of jobs, and it seldom happens that I don't have a few up my sleeve ready for use. I know every big employer in the district and in the whole city for that matter, and they ain't in the habit of sayin' no to me when I ask them for a job."²⁶

SOCIAL AND CHARITABLE ACTIVITIES OF POLITICAL MACHINES

To build up a successful political machine, a boss must have more than the support of the persons who secure appointment at his hands. A political machine must look to the support of others than officeholders if it is to keep control of the city government. Only through the votes of the rank and file can the machine elect its candidates to office and thus be able to grant privileges to the upper world of business or to party workers in the form of jobs, either public or private. This leads to the social and charitable activities which the machine uses to gain the support of a great class of voters.

These social and charitable activities are carried on by the precinct captain, the ward and district leader, and the boss. Much of this work is done through clubs, Tammany Hall maintaining 23 such clubs in Manhattan, or one in each assembly district. The district leader has his headquarters in the club house where people may come for aid and advice. The poor people of the district come here for amusement and entertainment—to talk, dance, play billiards, or listen to the music. Many social activities emanate from the club. Picnics, river excursions, fish fries, and clambakes are used to gain the support of voters.²⁷

The following newspaper account illustrates the use made by Tammany Hall of picnics and outings to gain the good will of the poorer classes:

²⁵ For further discussion of this question, see W. B. Munro, *op. cit.*, chap. ii.

²⁶ W. L. Riordon, *op. cit.*, p. 53.

²⁷ See R. V. Peel, *The Political Clubs of New York City*.

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Prizes for freckle-faced boys and large families were among the outstanding features of the Annual May Day party of the Thomas M. Farley Association, the Tammany organization of the Fourteenth Assembly District, held yesterday afternoon in Central Park. More than 28,000 children from the district consumed 40,000 portions of ice cream, 9600 quarts of milk and 4500 pounds of crackers.

Delegations from the forty-four election districts assembled at various points on First Avenue at 10 o'clock, and marched to Seventy-second Street, through which the procession passed to the park. The parade was enlivened by eight bands. Bright-colored floats accompanied each of the election district parties.

The morning was devoted to races and games and many of the children enjoyed rides in pony carts. Later in the day each of the girls received a jumping rope and the boys got baseball bats and balls. A thousand United States flags and more than 1500 whistles, rattles and other noise-making devices were distributed.²⁸

Incidentally, Mr. Farley acted as judge and chose the winner in the freckle contest.

The district leader sees that the poor have food and coal. A few years ago one Tammany leader distributed 1000 pounds of sugar in one-pound packages to poor families in his neighborhood. If the rent is unpaid, he fixes it up; if the family is in trouble with the law, he sees the magistrate. The boss or one of his representatives is the big brother and friend of the poor in the district. The value of such work to the machine at election time was described by Plunkitt of Tammany Hall as follows:

What tells in holdin' your grip on your district is to go right down among the poor families and help them in the different ways they need help. I've got a regular system for this. If there's a fire in Ninth, Tenth, or Eleventh Avenue, for example, any hour of the day or night, I'm usually there with some of my election district captains as soon as the fire-engines. If a family is burned out I don't ask whether they are Republicans or Democrats, and I don't refer them to the Charity Organization Society, which would investigate their case in a month or two and decide they were worthy of help about the time they are dead from starvation. I just get quarters for them, buy clothes for them if their clothes are burned up and fix them up till they get things runnin' again. It's philanthropy, but it's politics, too—mighty good politics. Who can

²⁸ *New York Times*, May 31, 1924, p. 20.

tell how many votes one of these fires bring me? The poor are the most grateful people in the world, and let me tell you, they have more friends in their neighborhoods than the rich have in theirs.

If there's a family in my district in want I know it before the charitable societies do, and me and my men are first on the ground. I have a special corps to look up such cases. The result is that the poor look up to George W. Plunkitt as a father, come to him in trouble—and don't forget him on election day.²⁹

There is evidence that social service is still used by the machine to create good will—and to get votes. Mr. Morris Eller, boss—or political leader—of the twentieth ward in Chicago, testified before the Reed Committee as follows:

MR. ELLER. If you wish, I will explain how our organization works, Senator. I have lived in that neighborhood 43 years, and have been in politics there 35 years right in that immediate neighborhood. The ward is cosmopolitan; what they call the melting pot. We have various nationalities—Jews, Russians, Croatians, Lithuanians, Germans, Irish, and colored. They are not a very prosperous people and need our help a little. If it is not one thing it is another. . . . All my committeemen mingle with them every day, and so do their assistants; and once a year they respond to our request when we request them to vote that ticket.³⁰

Former Mayor William Hale Thompson of Chicago, in testifying before the Reed Committee, stated that in some wards the organization was at work 365 days in the year. He gave as an example the ward organization of Mr. Ollie King. An annual picnic was held by this organization. Said the former mayor:

They make a profit at that picnic of \$6000, \$7000 or \$8000. That money is used as a benefit fund. That is a workingman's ward. They have poor people, and they have suffering occasionally in that ward, and the ward organization acts really as a public institution, and Democrats, Republicans, and Socialists alike, if they are in need, if their families, their women, or children are in need, they give them coal and they give them shoes, etc. You can call that politics or not. I call it corking good politics.³¹

²⁹ W. L. Riordon, *op. cit.*, pp. 51-52, by permission of Doubleday, Doran & Company, Inc.

³⁰ *Reed Committee Hearings*, Part 2, p. 1882.

³¹ *Ibid.*, Part 2, p. 1788.

In testifying before the Special Committee of the United States Senate on campaign expenditures in Louisiana, one ward leader, in answer to the question as to how the money raised by the ward organization was spent, said: "Well, we sometimes buy floral offerings in case of death in the family of any member. We send out Thanksgiving baskets on Thanksgiving Day and we send Christmas baskets. At other times we buy medicine for those of our friends who are too poor to do so, and even buy shoes for the children."³²

The boss knows that these are effective means of building up a strong organization. Here is political realism at its best. "Loyalty to a party machine," says Harry Elmer Barnes, "is not begotten wholly by sonorous phrases or slanderous charges during a campaign. It rests in part upon an unending and ceaseless devotion to getting a job for Tom, taking care of Dick's sick mother, and getting Harry out of the clutches of an over-savage or vindictive public prosecutor. Until the academicians and professional social workers grasp this vital truth they will continue to stare blankly at the election returns."³³ Imagine a reformer telling a group of voters that they should repudiate a party because contracts were not let to the lowest responsible bidder or the spirit of the civil service law was being violated, in a district where the political leader had carried out the social and charitable activities discussed above. Intrinsically, says J. T. Salter, the realization of the ideal of more efficient administration or honest government "may hold more in store for the 'man in the street' than does a smile from a friendly face, or a basket of groceries at Christmas time, but in the absence of catastrophes and depressions the majority of voters cannot be convinced of this merely through newspaper articles, editorials, talks over the radio, or political sermons given by strangers. And so they turn to the man who comes to them directly."³⁴ In his study of Negro politicians in Chicago, Harold F. Gosnell emphasized the extent to which personal service was rendered by the

³² *Hearings on Senatorial Campaign Expenditures, Louisiana*, 1932, p. 529.

³³ J. Bright, *Hizzoner Big Bill Thompson*, p. xxii. Also see Walter Lippmann, *A Preface to Politics*, pp. 42-45; G. F. Hudson, "Tammany Remains," 113 *Nineteenth Century* 282 (Mar., 1933).

³⁴ J. T. Salter, *Boss Rule*, p. 23.

machine in order to secure the Negro vote.³⁵ The Negro in Chicago votes "for the man who is his friend," and the precinct captain and political organization which render service to him are relied upon for advice as to which of the candidates are his friends. Why shouldn't the man who helps them get a job, gives them a Christmas basket, helps them "get on relief," fixes their traffic slips, and sees what can be done when policy-writers are arrested be the one to give them advice as to how to vote at election time? Human nature being what it is, we may expect such activities to continue to occupy an important place in the outcome of municipal elections.

Jane Addams pointed out that in Chicago hundreds of constituents were indebted to the alderman for personal kindness, "from the pedlar who received a free license to the business man who had a railroad pass to New York."³⁶ Mr. Vare, in testifying before the Reed Committee, stated that the "extremely highly efficient party organization" in Philadelphia was "based on direct service to the people."³⁷ He said that the Philadelphia organization

is not only founded on republicanism, but one of its cardinal principles is to be of service all along the line from the smallest officer up to the highest who is a candidate. They are instilled with the thought of service—service to their immediate neighbors; and as a result of that, division men are constantly active, not only in the dissemination of information, because they have to very frequently combat opposition stories in the newspapers; so that while we are short of having public newspapers to advocate the cause of the Republican organization, we do have an efficient party organization that is constantly in touch with the wants of the people.³⁸

Such activities unquestionably are important factors in getting votes. As D. H. Brogan says, "It is important to remember that every machine has its nucleus of support because it has earned it.

³⁵ H. F. Gosnell, *Negro Politicians*, chap. vii.

³⁶ Jane Addams, *op. cit.*, pp. 316-317.

³⁷ *Reed Committee Hearings*, Part 1, pp. 497, 504.

³⁸ *Ibid.*, Part 1, p. 496. "The Philadelphia Organization is in fact one of the greatest welfare organizations in the United States," says Mr. Vare. "It must stand for something worthwhile, or otherwise how could it maintain its firm hold on the suffrages of the Philadelphia public through many decades and win victories time and again in every ward of the entire municipality? The answer is this: *The Philadelphia Organization is successful because it serves the people.*" W. S. Vare, *My Forty Years in Politics*, p. 29.

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Whether it has earned it for its ill or good deeds matters little on election day."³⁹

What, it may be asked, is the objection if the boss exacts money from the privileged classes in order to do this charitable work? The answer would appear to be that given by Merriam and Gosnell, namely, that "the boss is doing, in a crude and enormously expensive way, work that the community itself should and can do more effectively, and without betraying the government into the hands of organized agents of privilege."⁴⁰ While doing this charitable work to secure the votes of the poor, the boss may be "selling them short" in other ways. He may secure jobs from a public utility for needy men while using a corrupt government to give favorable (from the utility view) and unfair (from the public view) franchises to the same utility. Although a few needy people may secure jobs at his hands, the public, including the poor, may pay a high price in unsatisfactory public utility service and unreasonable rates. The boss may give a Christmas party for poor children but use his influence to check municipal activities in the field of housing because the interests who finance him are opposed. There is a question as to whether the boss is rendering real service to the poor; if he is, the price paid is too high. The extra-legal government—the political machine—may be efficient, but it is not the public which profits from this efficiency.

MONEY TO FINANCE THE POLITICAL MACHINE

Money is needed by the boss to enable him to retain control of the city government. Not only is there the charitable and social work which has been discussed in the preceding pages, but there is the expense of conducting campaigns, both primary and election. To conduct an election campaign in one of our larger cities requires a large expenditure of money. Tammany Hall is said to have raised and spent as much as \$1,000,000 in a single mayoralty campaign. In the November, 1945, city election in New York, approximately \$2,000,000 was spent in behalf of the various candidates. The largest amount—over \$800,000—was collected and expended in behalf of the Democratic candidates who won the

³⁹ D. H. Brogan, *Government of the People*, p. 218.

⁴⁰ C. E. Merriam and H. F. Gosnell, *op. cit.*, p. 179.

election.⁴¹ In Chicago and Philadelphia the campaign funds in a mayoralty contest frequently reach \$500,000. Frank R. Kent estimates that in a city of 700,000 to 1,000,000 population, a minimum of \$25,000 is required to finance a single-party city-wide contest, and an expenditure of \$35,000 to \$40,000 more is necessary in the general election. If there are two strong factions in a party, the expenditure will run to \$70,000 in the primary, with \$50,000 more for the election.⁴²

Among the items of expenditure to be met in a campaign are rent of headquarters and halls for speakers, advertising, sample ballots and registration lists for use of party workers, clerk hire, campaign literature, and election day expenses. When we consider that the postage for sending a first-class letter to 500,000 voters would be \$15,000, we can appreciate the cost of conducting a campaign in a large city. The cost of paper and envelopes and preparing the letter would double the expenditure.

Candidates for office are assessed a certain amount to be placed in the campaign fund. There is generally an accepted sum which a candidate for a particular office is supposed to contribute. Much, however, depends upon the wealth of the candidate. Assessment of party officeholders is another source of funds. In many cases all persons holding office as a result of party support—whether elective or appointive—are assessed a certain percentage of their salary. This assessment is usually 2 per cent. Contributions to campaign funds are made by others than officeholders and candidates. Companies which stand to gain or lose, depending upon whether they have the good or the ill will of the political machine, can generally be depended upon for a contribution.

HONEST AND DISHONEST GRAFT

In the popular mind, and probably in some cases in actual practice, graft is one of the most important sources of funds for the boss in retaining control of the city government. It is necessary to note, however, the distinction drawn by Plunkitt between honest and dishonest graft.

⁴¹ *New York Times*, Oct. 28, 1945.

⁴² F. R. Kent, *op. cit.*, chap. xix.

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Everybody is talkin' these days about Tammany men growin' rich on graft, but nobody thinks of drawin' the distinction between honest graft and dishonest graft. There's all the difference in the world between the two. Yes, many of our men have grown rich in politics. I have myself. I've made a big fortune out of the game, and I'm gettin' richer every day, but I've not gone in for dishonest graft—blackmailin' gamblers, saloon-keepers, disorderly people, etc.—and neither has any of the men who have made big fortunes in politics. There's an honest graft, and I'm an example of how it works. I might sum up the whole thing by sayin': "I seen my opportunities and I took 'em." Just let me explain by examples. My party's in power in the city, and it's goin' to undertake a lot of public improvements. Well, I'm tipped off, say, that they're going to lay out a new park at a certain place. I see my opportunity and I take it. I go to that place and I buy up all the land I can in the neighborhood. Then the board of this or that makes its plan public, and there is a rush to get my land, which nobody cared particular for before. Ain't it perfectly honest to charge a good price and make a profit on my investment and foresight? Of course it is. Well, that's honest graft. Or, supposin' it's a new bridge they're goin' to build. I get tipped off and I buy as much property as I can that has to be taken for approaches. I sell at my own price later on and drop some money in the bank. Wouldn't you? It's just like lookin' ahead in Wall Street or in the coffee or cotton market. It's honest graft, and I'm lookin' for it every day in the year. I will tell you that I've got a good lot of it too. . . . Now, in conclusion, I want to say that I don't own a dishonest dollar. If my worst enemy was given the job of writin' my epitaph when I'm gone, he couldn't do more than write "George W. Plunkitt. He Seen His Opportunities, and He Took 'Em."⁴³

The test of honesty applied by Plunkitt to graft seems to have been as to whether it could get by the law. If it was so concealed that conviction in the courts could be escaped, it was honest graft. His foresight was primarily a question of control over the city government. A powerful boss with a well-organized political machine can determine policies quite effectively. Parks, bridges, and other improvements will go where he decides they should go.

⁴³ W. L. Riordon, *op. cit.*, pp. 3-10, by permission of Doubleday, Doran & Company, Inc. As an example of dishonest graft, Plunkitt cited the Republican superintendent of the Philadelphia almshouse who stole the zinc roof off the building and sold it for junk. "That was carryin' things to excess. There's a limit to everything, and the Philadelphia Republicans go beyond the limit." *Ibid.*, p. 56.

Buying up sites to resell to the city at higher prices in such cases is hardly a question of foresight; it is "honest" graft.

"Honest graft" is one of the most serious types of official corruption because it involves a kind of complacency on the part of the public that is difficult for reformers to attack. If the graft is of the type for which conviction can be secured in a court, there is hope that a popular revolt at the polls can be brought about and an administration swept from power. In the case of "honest graft," the attitude has been in too many cases that "they all do it" and that nothing is gained by ousting one group for doing what the next is practically certain to do. This complacency makes an attack upon an administration guilty of honest graft especially difficult.

Boss Tweed of New York furnishes an excellent illustration of a boss who used both honest and dishonest graft. In the fall of 1861 he was penniless; in the spring of 1863 he was a rich man. As was later brought out in his prosecution and conviction in the courts, this wealth was gained through graft—in this case, much of it dishonest. Tweed owned or was a partner in several companies which did business with the county or city. A stationery company of which he was proprietor had in 1870 a gross income of over \$3,000,000, principally from city business. That this volume of business probably resulted in large profits is shown by a bill of \$10,000 paid for supplies to one of the city's bureaus. "For this \$10,000 the city received six reams (3000 sheets) of foolscap paper; six reams of note paper; two dozen rubber bands."⁴⁴ Tweed secured contracts for public printing, which is always a lucrative source of funds. He bought a little-known newspaper and had it selected as the official organ for city and county advertising.⁴⁵ He also formed a printing company which did the city printing. When Harlem Hall was sold, its equipment was disposed of at public auction. Three hundred of the benches were bought by Tweed at \$5.00 each, or a total of \$1500. There was another prospective bidder present, but Tweed agreed to let him have the number of benches he wanted—17—at the price he paid. The remaining benches were turned over to a company owned by a friend, and were then sold to the county at \$600 each. The cost to the county was \$169,800, which was \$168,-

⁴⁴ D. T. Lynch, "Boss" Tweed, p. 340.

⁴⁵ Gustavus Myers, *The History of Tammany Hall*, p. 238.

300 more than Tweed had paid at public auction. In addition he received the \$85 for the 17 benches he sold at cost to keep the other prospective bidder from bidding. At the time of the above transaction Tweed was on the Committee on Armories of the Board of Supervisors, and the chairs were bought by the county for the use of its armories.⁴⁶

Boss Croker also used his power to make money. His real estate connections illustrate his methods.⁴⁷ It was brought out in the Mazet Investigation of 1899 that soon after he became boss of Tammany Hall he entered into partnership to form an auctioneering firm. This firm had practically a monopoly of the judicial sales of real estate. As boss of Tammany Hall, Croker was instrumental in the election of judges. The judges appointed the referees, and they in turn appointed the auctioneers. During the investigation Croker was asked: "So we have it, then, that you, participating in the selection of judges before election participate in the emolument that comes away down at the end of their judicial proceeding; namely, judicial sales?" His answer was: "Yes, sir."

In some cases the boss does not deal with the city directly. Instead, private companies sell the material—often at an exorbitant price. From this the boss is generally believed to receive his share; it may be in the form of a campaign contribution. In 1865 a street-cleaning contract was let to a friend of Tweed who received \$800,000 for the job, though a lower bidder offered to do the work for \$300,000.⁴⁸ The most brazen case of graft during the Tweed regime was in connection with the construction of the New York County courthouse. This was accomplished by the audit and payment of fictitious claims. A plasterer was paid \$138,187 for two days' work; the total amount paid him was \$2,870,464.06. Thermometers for the courthouse cost \$7500; three tables and 40 chairs cost \$175,729.60. The total bill of this firm "for supplying the County Court House with furniture and carpets" was \$5,691,144.26. A carpenter was paid \$360,747.61 for one month's work; \$460,000 was paid for lumber worth \$48,000. One individual received \$1,149,874.50 for repairing plumbing and gas-light fixtures in the

⁴⁶ See D. T. Lynch, *op. cit.*, p. 241.

⁴⁷ L. Stoddard, *op. cit.*, p. 125.

⁴⁸ D. T. Lynch, *op. cit.*, p. 273.

courthouse. His total bill was nearly \$3,000,000. The total cost of the building and equipment was over \$12,000,000; it has been estimated that the honest price should not have exceeded \$3,000,000.⁴⁹

Companies who deal with the city or come into contact with its government appreciate the power of the boss. If he is a lawyer, money can be paid to him in the guise of legal fees. The Erie Railroad paid more than \$100,000 to Tweed for legal services. The boss or someone closely associated with him makes an ideal attorney to appear before a board of appeals to secure an adjustment in a zoning case. It may be good business to retain the same person to secure a pier lease or a bus franchise.⁵⁰ The boss can be made the local agent of an insurance company; the chances that this company will receive the city's insurance business are good.⁵¹ There are bonding companies, road oil companies, and various other businesses which are desirous of securing city business. As William B. Munro points out, making the boss the local agent is an arrangement mutually profitable to the boss and to the company, but not to the taxpayers.⁵²

The boss may be given some stock in corporations dealing with the city. "Almost every corporation which expected to do much business with the city found it convenient to make Richard Croker the holder of a sizeable block of its stock . . ." He had stock market and business connections which proved to be of great value. Referring to the "inside information" he received on stock market conditions, his biographer has said: "His Wall Street associates simply could not let him lose; he was altogether too valuable."⁵³

The man who has the degree of control over the government of the city that the boss has, the man who can, if he sees fit, secure the passage of damaging legislation, who can see that favors are granted, who can double your tax bill or halve it at will—this man is assured of satisfactory treatment by those who stand to gain or lose. If the thing desired by the boss is money, then he stands a good chance of being able to make the proper arrangement.

The question may arise as to whether the matters discussed in

⁴⁹ *Ibid.*, pp. 338, 364-365; Gustavus Myers, *op. cit.*, pp. 238-239.

⁵⁰ See Norman Thomas and Paul Blanshard, *op. cit.*, p. 45.

⁵¹ For a case of this in Chicago, see C. H. Woodydy, *op. cit.*, p. 100.

⁵² W. B. Munro, *op. cit.*, chap. ii.

⁵³ L. Stoddard, *op. cit.*, pp. 126, 128.

the preceding pages are not of an earlier era, practices of the period of Tweed and Croker but no longer found in our cities. The Seabury investigation in New York City indicates that Plunkitt's principle of "honest" graft is still practiced to some extent. Zoning offers an illustration of the modern practice. The Board of Standards and Appeals, composed of five members who are political appointees, has power to grant exceptions from zoning ordinances. Permitting a property owner to vary from the provisions of the ordinance may be a very valuable concession. In 1926, when Judge Olvany was boss of Tammany Hall, the law firm of which he was a member suggested to a builder who was seeking an exception that he engage a certain attorney to present his case to the Board of Standards and Appeals. According to the Seabury Report, the lawyer suggested by the Olvany firm charged a fee of \$30,000; he kept \$5000 and paid \$25,000 to the law firm of which the boss was a member. It was not illegal; possibly it was "honest" graft. Of \$250,000 paid by individuals to attorneys to present their cases before the Board of Standards and Appeals, \$200,000 was remitted to the law firm of which Judge Olvany, then boss, was a member. Judge Seabury in his report stated that the committee had been able "to establish numerous instances of Judge Olvany's sale of his political influence, and to show that, between the time he became Leader of Tammany Hall and November 5, 1931, his firm banked upwards of \$5,280,000 and received other fees which never were deposited in the firm accounts."⁵⁴

A similar procedure was followed in selling land to the city or in securing the lease of a city-owned dock by a steamship line. In discussing the procedure which it was necessary for a steamship company to follow to secure a lease, Judge Seabury said that the evidence showed too eloquently "how arrangements for the granting of pier leases in the City of New York are made directly with Tammany Hall. It is also evidence of the subtle system by which graft is now extorted—to wit, the interposition of a lawyer to whom the money is passed under the guise of a legal fee."⁵⁵

⁵⁴ *In the Matter of the Investigation of the Departments of the City of New York, Intermediate Report*, Jan. 25, 1932, pp. 9-18.

⁵⁵ *Ibid.*, pp. 85-97. For an excellent discussion of political practices of Tammany Hall, see Henry F. Pringle, "Tammany Hall, Inc.," 150 *Atlantic Monthly* 425 (Oct., 1932). Cf. W. Liggett, "The Plunder of Chicago," 25 *American Mercury* 269 (Mar. 1932).

Some of the funds of the boss are thus received from persons who are seeking privileges. To that extent they may be looked upon as a cause of corruption in city government. As has been pointed out earlier, however, part of the money these people pay in the form of campaign funds, or as fees for service rendered, is not to secure privileges but in self-defense. Knowing that the boss may use his power to harass and annoy them, just as he may use it to grant special favors, they buy exemption or protection from such action. It may be necessary to throw a scare into some persons by the use of "sandbaggers" and "strike bills." This method of raising money has been referred to as the nuisance value of the boss.⁵⁶ It is, in effect, a system of blackmailing.

Tribute received for non-enforcement of the law has also been a source of money for the political machine. Prostitutes, streetwalkers, gamblers, and criminals are interested in securing immunity from law enforcement. For this they are willing to pay a price. Much of the graft in connection with vice, however, is what might be referred to as police graft, rather than political. Some of this may finally reach the "higher-ups," but it is doubtful if this can be looked upon as an important source of funds for the boss.⁵⁷

Racketeering is one of the newer sources of revenue for the boss. The Eighteenth Amendment opened the door to this new source of income. The liquor traffic was too profitable to submit quietly to the provisions of the Volstead Law. As stated by Munro, "The saloon went out—but the bootlegger, the hijacker, the gangster, and the racketeer came in." The boss saw an opportunity to use his ability to "fix things." Protection against law enforcement for those engaged in illicit liquor traffic unquestionably furnished a source of revenue for many bosses during the prohibition era.

There developed out of this protection against law enforcement another source of revenue—the racket. Persons engaged in illegal

⁵⁶ Gustavus Myers, *op. cit.*, p. 315.

⁵⁷ The Chicago Vice Commission in its report in 1911 stated that the profits from prostitution alone were estimated at \$15,000,000 a year, and that probably one-fifth of this amount should be classed as police graft. F. R. Kent (*op. cit.*, p. 134) says: "The charge that he [the boss] makes a large part of it [his money] by collecting from prostitutes, gamblers, 'streetwalkers,' criminals, and law violators generally, which has so frequently been made and is so generally believed, is not, in my judgment true. Even in New York, it is not true. Certainly it is not true in the smaller cities." Cf. V. O. Key, "Police Graft," 50 *Am. Jour. Sociology* 624 (Mar., 1935).

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liquor traffic desired protection not only against law enforcement but against competition. Why not, by force and intimidation, by the use of the bomb and the machine gun, force legitimate business to buy protection? The thing bought by legitimate business might mask in disguise, but in most cases it was for protection from the person or organization to whom the tribute was paid. There thus developed, under the name of racketeering, a system of extortion levied upon both legitimate and illegitimate business. Dealers in milk, poultry, fish and other foods, the cleaners and dyers, laundrymen, and building contractors are some of the legitimate business men at which the racketeer struck. It has been estimated that racketeering costs the public from \$12,000,000,000 to \$18,000,000,000 a year.⁵⁸

Opinion differs as to the extent to which the boss is a party to and responsible for racketeering. Unquestionably the situation varies greatly from city to city. In some cities, gangsters seem to defy not only the law but the boss. The view generally held, however, is that in most cases there is a close relationship between the two—if not an alliance. "Rackets and crooked politics are always closely allied," says Munro, "for racketeering could not succeed if the political bosses were minded to stamp it out. They have only to say the word and the police would make life troublesome for the fraternity of crooks in any ward. But why should they say the word? Why should the boss and his associates choke off a source of revenue which comes to them so easily and without risk?"⁵⁹ Denis T. Lynch states that a large part of the money extorted from the business men of New York City goes "into the pockets of their political protectors in both parties."⁶⁰

BOSSSES

What type of person becomes boss of an American city? Is he the flashily dressed, illiterate, foreign-born product of the slums, crude in manner and rough in tactics, that is often pictured? The

⁵⁸ D. T. Lynch, *Criminals and Politicians*, p. 6.

⁵⁹ W. B. Munro, "The Boss in Politics—Asset or Liability?" 169 *Annals of the American Academy of Political and Social Science* 12, 17 (Sept., 1933).

⁶⁰ D. T. Lynch, *Criminals and Politicians*, p. 6.

answer is that there is no typical boss. William B. Munro says that "apart from courage, persistence, and a 'flair for politics' there is no one quality that all bosses possess."⁶¹ Harold Zink concludes his study of a score of bosses in the United States with the statement: "The classic description of the derby-hatted, sport-suited, flashy-jewelried, plug-ugly boss, with coarse, brutal features, protruding paunch, and well-chewed stogy, who has no morals and is socially impossible, is about as accurate as most of the other 'typical' portrayals. Political bosses are not a distinct species of human beings but possess the physical, mental, and moral variations of men in general."⁶²

Bosses are not, as many people believe, necessarily Irish. While half of the 20 bosses studied by Zink were of Irish descent, both parents of Fred Lundin of Chicago were Swedish, and both parents of Abraham Ruef of San Francisco were French. Although 10 of the 20 were Catholic, Ruef was a Jew. While they generally come from poor laboring families, the father of "Doc" Ames of Minneapolis was a physician. Many bosses have not advanced far in the field of formal education, 13 of the 20 leading bosses not going beyond the grammar grades. George Olvany of Tammany Hall, however, was a graduate of New York University Law School. "Doc" Ames was a graduate of Rush Medical School in Chicago, and "Abe" Ruef of San Francisco was an honor student at the University of California and a graduate of the law school at that institution.

Much money passes into the hands of the boss of an American city. He can get this money because of his power and control over the city government. He realizes that when his hold on this government slips from his grip, no longer will he have a marketable commodity—power—and no longer will he be able to collect such sums of money. His opportunities for both honest and dishonest graft are lost when he loses control of the government. To continue his control, he spends freely of the money coming to him. As has been pointed out before, large sums of money are required to keep a political machine functioning. Some bosses not only have failed to amass any personal wealth from their position as boss, but have

⁶¹ W. B. Munro, *Personality in Politics*, p. 58.

⁶² Harold Zink, *City Bosses in the United States*, p. 65.

spent out of their own pockets to support their machine. This was true of James McManes of Philadelphia. Considering the large sums of money handled and the unique position occupied by bosses, the wealth accumulated by them has not been excessive.⁶³

If there is any one characteristic of a boss, it is that he is efficient, he gets results—he delivers the goods when needed. He is, states Munro, “by all odds the most ‘efficient’ figure that the American municipal system has produced.”⁶⁴ Though the machine opposes the merit system in government, it applies it with vigor in its own affairs. Bosses enter politics early and climb only after a long apprenticeship, hard work, and demonstrated ability.⁶⁵ Once he reaches the coveted post, he cannot rest on his laurels; the rule of indefinite tenure or during good behavior doesn’t apply to the boss. He must continue to produce results or get out.

What will break the hold of this “uncrowned king of American municipal politics”? Many suggestions have been offered. One is to simplify the machinery of government and make responsibility more direct. The council-manager plan is offered as a step in the right direction. As has been pointed out above, the boss exists because of patronage and spoils. Civil service laws will tend to take away his patronage and to weaken his hold. Requiring honest competition in the letting of public contracts will also help to weaken him. Non-partisan citizen organizations that work for honest elections and efficient government will help. The charter committee in Cincinnati has been an important factor in ending boss rule in that city. The Fusion party in New York City materially weakened the powerful Tammany Hall. Improvement in the field of election administration offers another means of weakening the control of the boss. Fraudulent voting has been used by bosses when they found it necessary to do so to retain control of the government. Improved methods of registering voters and conducting elections—the removal of election boards from political control—will aid in preventing boss control of elections by fraudulent practices. The short ballot will help in breaking his power because it will then be

⁶³ For the wealth of 18 city bosses at the time of their death, see *ibid.*, pp. 37-38.

⁶⁴ W. B. Munro, *Personality in Politics*, chap. ii.

⁶⁵ For the steps through which a boss must travel, see F. R. Kent, *op. cit.*, pp. 84-85.

more difficult for the machine to dodge responsibility.⁶⁶ When political authority is officially decentralized it is "concentrated behind the scenes."⁶⁷

An increase in the social activities of the government takes away a source of the boss's power in dealing with the poorer classes. The effectiveness of his charitable and social work has been due in part to the fact that the government has failed to do its duty in meeting such needs.⁶⁸ The boss is in a sense "the product of social and political conditions which we have allowed to grow up without enough planning, and to drift along without restraint. The forgotten man wants attention, consideration, leadership. If he does not get it inside the frame of government, he will seek and find it outside."⁶⁹ A more positive policy on the part of the government makes unnecessary, and ineffective as a vote-getting device, some of the activities of the boss. If the employment problem is handled in a satisfactory manner by the government, his activity as a job-broker in securing jobs from private corporations for his constituents is less effective. An advanced social program by the government—national, state, and local—may account in part for the defeat of the Republican machine in Philadelphia in 1933, and Mayor La Guardia's election in New York City in 1933 and his reelection in 1937 and 1941 over Tammany candidates. The effect on the Democratic political organization in Chicago was not marked, a result in part, some suggest, of the fact that the latter organization was in greater favor with the national administration than was Tammany Hall. By taking over and performing the vote-getting welfare activities of the machine, the government can weaken its hold on the electorate. If the voter receives attention and consideration from his government, he will not be so grateful when it comes from the outside and blindly reward the one giving it with his vote. It is possible, however, that the local political machine will now depend for its strength upon its ability to cooperate and work with state

⁶⁶ H. F. Gosnell, "The Political Party versus the Political Machine," 169 *Annals of the American Academy of Political and Social Science* 21, 27 (Sept., 1933).

⁶⁷ W. B. Munro, "The Boss in Politics—Asset or Liability?" p. 14.

⁶⁸ See C. E. Merriam and H. F. Gosnell, *op. cit.*, p. 179.

⁶⁹ W. B. Munro, "The Boss in Politics—Asset or Liability?" pp. 12, 20.

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and national governments in administering public relief and other social welfare programs.

While the invisible government, the power of the boss, still exists in many cities, it has become a factor of decreasing importance in all cities, and has disappeared entirely in some. Some of the developments which have led to a decline in the importance of the boss as a factor in American municipal politics will be considered in the following chapter. The more important among these are citizen organizations, research bureaus, and the better reporting of municipal governmental activities so as to give the voters a more substantial basis upon which to determine whether the way in which public affairs have been administered warrants their support. An intelligent electorate is not conducive to government by bosses.

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Public Opinion and City Government

The principle of democratic government as applied to the American city assumes that every citizen has certain opinions, definite views, which he has thought out for himself, of what the city needs, of the principles that should be applied in governing it, and of the men to whom the government should be entrusted.¹ Actual practice, as applied in our cities, does not support this theory of democratic government. The complexity of questions involved in governing a city is so great that it is asking too much to expect the citizen to vote intelligently. There are in the large city millions of dollars to be spent. How can the citizen know whether this is being expended in a proper manner and that, to use the stock expression, he is receiving a dollar's worth of service for every dollar spent? How can he know whether the personnel administration of his city is satisfactory, whether there is efficiency in the police, fire, health, and other departments of his government?

Attempts have been made to devise a scheme for measuring the efficiency of city government, and various criteria have been suggested for measuring it.² As yet, however, the tests devised are such that the average citizen cannot hope to use them to determine whether the administration has been satisfactory and is entitled to a vote of confidence, or whether it should be repudiated at the polls. The result is that all too often administrations stand or fall,

¹ James Bryce, *The American Commonwealth*, vol. 2, p. 250.

² On this subject, see C. E. Ridley, *Measuring Municipal Government*, Municipal Administration Service, Publication No. 4, New York, 1927; C. E. Ridley and H. A. Simon, *Measuring Municipal Activities* (Chicago, 1928). Also see E. S. Griffith, *Current Municipal Problems*, chap. v.

not on their records but on other factors largely extraneous to the proper and efficient administration of the affairs of public office. "Elections," says one writer, "have long ceased to be a struggle between fundamental policies."³

The same difficulty arises in the use of the initiative and referendum. The question of municipal ownership is often submitted to the voters of a city. In determining whether this added function should be undertaken by his city, the voter must consider the question of present service and rates, whether the system of regulation now provided is functioning properly, and, finally, whether there is good promise of success for municipal ownership. Students of city government, economists, and experts in the public utility field may feel the need of considerable study of the situation in the particular city before answering this question. Yet, without hesitation, we entrust the decision in this case, and in many others, to the voters of the city.

To meet in an intelligent manner the burden placed upon him, the voter needs to give much time to the study of politics. In actual practice, he does not do this. Even though the burden of electing many officers and passing upon the wisdom of many issues has been placed upon him, the voter has not felt duty bound to keep informed so that he may vote intelligently. Bryce found that his civic duty to the community was the fifth of the citizen's interests, being outranked by his occupation, domestic concerns, religious beliefs, and amusements. While the order differs from country to country and with individuals, it is generally true that civic responsibility does not rank very high on the list. The result of placing this burden on the voter is, in too many cases, voting which is not the result of rational thinking on his part. Bryce stated that there is little solidity and substance in the political or social beliefs of nineteen persons out of twenty. "The beliefs, when examined, mostly resolve themselves into two or three prejudices or aversions, two or three prepossessions for a particular leader or party or section of a party, two or three phrases or catch-words suggesting or embodying arguments which the man who repeats them has

³ R. D. Casey, "Party Campaign Propaganda," 179 *Annals of the American Academy of Political and Social Science* 96 (May, 1935).

not analyzed."⁴ "Most of them," says Frank R. Kent, "think with their emotions and vote from prejudice or passion or from personal influence or interest."⁵

Public opinion which is registered at the ballot box is thus not the result of deliberation and thought on the part of the voter. In many cases, as has been pointed out above, it has an irrational basis, such as prejudice or sentiment. In other cases, it is the result of propagandizing by interest groups which stand to gain or lose as the result of the outcome of a municipal election. Such groups seek to create public opinion favorable to their point of view. There has tended to develop, as pointed out by Bryce, an oligarchy within our democracy.⁶ This is an oligarchy of interest groups which are creating public opinion. According to Bryce, only a "small part of the view which the average man entertains when he goes to the polls is of his own making."⁷ The idea that public opinion is a spontaneous emanation from the mind of the multitude is now in disrepute. It is not a thing that rises from the minds of the many, uninspired, unaided, and unled. "Public opinion, the opinion of the Many," states William B. Munro, "is what the Few have made it. If public opinion insists upon one course of policy rather than another it is because the Few in one political camp have been more successful in marketing their leadership than the Few in the other camp."⁸

The group or groups which control the agencies for forming public opinion are important factors in determining the results at the ballot box. It is in their hands that direction and decisions rest. It is the man who hires the hall, who buys space in newspapers and on billboards, who buys time on the radio, who deluges the mails with literature, who rallies people into organizations for the promotion of causes, that is manufacturing public opinion. "Success at the polls, for men and measures alike," says Munro, "very often depends upon the amount of high voltage propaganda that can be

⁴ James Bryce, *op. cit.*, vol. 2, p. 250. Also see James Bryce, *Modern Democracies*, vol. 2, p. 547.

⁵ F. R. Kent, *The Great Game of Politics*, p. 203.

⁶ James Bryce, *Modern Democracies*, vol. 2, p. 550.

⁷ James Bryce, *American Commonwealth*, vol. 2, p. 254.

⁸ W. B. Munro, *Personality in Politics*, p. 85, by permission of The Macmillan Company, publisher.

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bought and paid for. The human herd does not seek the thoroughbred and follow him. It trails the bell-wether with the loudest bang."⁹

What are the groups which are instrumental in forming public opinion in the American city? They are the groups which, according to Charles E. Merriam, constitute the informal and irresponsible government back of the formal government. For Chicago he has listed these groups as follows: Political parties and factions; civic societies; business, labor, racial groups; religious groups; regional groups; professional groups; women's groups; the press; and the underworld.¹⁰ Although the grouping varies in other cities, everywhere there are interest groups attempting to influence public opinion. There is propaganda and counterpropaganda—the religious groups versus theatrical and amusement groups, manufacturing interests versus labor—all attempting to form public opinion. All too often the appeal is to the "traditions, prejudices, aversions, or inertia of the people." The result of this effort to control public opinion, according to Walter Lippmann, is that public opinion is "not the voice of God, nor the voice of society, but the voice of interested spectators of action."¹¹

The effectiveness of these groups in forming public opinion does not depend upon numbers. As pointed out by Dr. Lowell, intensity is an important factor in the spread of opinions.¹² It is the opinion not of the numerical but of the effective majority that counts. One thing which determines the effectiveness of a group in forming public opinion is the amount of money it has to spend. Advertising, propagandizing—or the forming of public opinion—whether for men or for measures, costs money. It is the groups that stand to gain or lose financially that are willing to expend money to form public opinion. The economic motivation is an important factor in city government.¹³ As Mayor Jones of Toledo once said, the rule of

⁹ W. B. Munro, *The Invisible Government*, p. 129.

¹⁰ C. E. Merriam, *Chicago*, p. 93.

¹¹ Walter Lippmann, *The Phantom Public*, p. 197. For a further discussion of group pressure in the formation of public opinion, see Robert Luce, *Legislative Principles*, chap. xxiii.

¹² A. L. Lowell, *Public Opinion and Popular Government*, p. 14.

¹³ Charles A. Beard first called attention to the economic motivation in politics. See Charles A. Beard, *An Economic Interpretation of the Constitution of the United States*; *Economic Origins of Jeffersonian Democracy*; and *The*

gold is often more effective in municipal government than the Golden Rule.¹⁴

Among the factors which influence public opinion, special mention should be made of the press. Many people, without realizing it, form their opinions from the newspaper, which has been referred to by Walter Lippmann as the Bible of democracy.¹⁵ Because of its power in the formation of public opinion, "the power that controls the press can exercise a tremendous amount of arbitrary control over the destinies of a democracy."¹⁶

Not only is there this power of the newspaper to influence public opinion and thus the vote on candidates and on measures, but by campaigns for or against measures the press is able to influence the action of the men who are in office. Professor Merriam has stated that "the press has a veto upon most ordinances."¹⁷ Exposure of vice and gambling by newspapers will lead to a stricter policy on the part of law enforcement agencies. Public officials fear adverse press criticism, and many of them unquestionably temper their policies to avoid unfavorable newspaper publicity.

There has been much criticism of the press as an instrumentality in the formation of public opinion. One criticism holds that because of the commercialized nature of the press it distorts or does not give the news. The business office, it is said, dominates the editorial policy and even determines whether certain news shall be printed. Large advertisers, it is claimed, in effect become the censors of the press. If a large advertiser is involved in a scandal, such as the violation of a building code or the bribery of a public official, pressure can be brought to have the story kept out of the newspapers.¹⁸

Regardless of the extent to which this is true, many people have lost faith in what they refer to as the commercialized, capitalistic

¹⁴ Brand Whitlock, *Forty Years of It*, p. 132.

¹⁵ Walter Lippmann, *Liberty and the News*, p. 57. Also see J. F. Essary, "Democracy and the Press," 169 *Annals of the American Academy of Political and Social Science* 110 (Sept., 1933).

¹⁶ A. B. Hall, *Popular Government*, p. 32. Also see Peter Odegard, *The American Public Mind*, chap. v.

¹⁷ C. E. Merriam, *op. cit.*, p. 247.

¹⁸ See E. M. Sait, *American Parties and Elections*, pp. 129-136, for a discussion of the role of the press in the development of public opinion. For a severe criticism of the press, see Upton Sinclair, *The Brass Check*. Cf. J. F. Essary, *op. cit.*

press. They look upon the press as the representative of capital and the defender of entrenched interests. This popular suspicion has been used in some cases to obtain support for persons who were opposed by the newspapers. This has been done in New York, Chicago, and Boston. Both the elder and younger Carter Harrisons, and, later, William Hale Thompson capitalized to advantage the opposition of the press. In 1921 Curley was elected mayor of Boston, and Kiel of St. Louis, in the face of overwhelming newspaper opposition. Tammany Hall has won elections in New York when there has been united newspaper opposition. Thus it should be noted that, though a powerful instrumentality in the formation of public opinion, in some cases its influence appears to be quite limited.

Other means used to appeal to the voters and to influence public opinion are campaign speeches, literature sent through the mails, billboards, and the radio. The radio, the newest of these methods, is now being extensively used in municipal campaigns in our larger cities.

MUNICIPAL CAMPAIGNS

Municipal campaigns should be devoted to an intelligent consideration of the issues involved.¹⁹ A study of campaign speeches and literature all too often reveals appeals made to prejudice, fear, and ignorance. Candidates find it more effective to appeal to the emotions than to the intellect. Though the question before the voters should concern the ability of candidates honestly, adequately, and intelligently to perform the duties of the office sought, campaigns are all too often not conducted on this basis. Insofar as personal qualifications enter, "mud-slinging" rather than impartial analysis is the rule.

Inconsequential factors are often more important than the real merits of the candidates for the office. It is bad policy for the name of a candidate to appear on the ballot "parted in the middle."²⁰ This

¹⁹ On the subject of political campaigns generally, see E. M. Sait, *op. cit.*; C. E. Merriam and H. F. Gosnell, *The Party System*, chap. xv; R. C. Brooks, *Political Parties and Electoral Problems*, chap. xii; P. H. Odegard and E. A. Helms, *American Politics*, chaps. xvii-xviii; H. R. Bruce, *American Parties and Politics*, chap. xiv; C. W. McKenzie, *Party Government in the United States*, chap. xv; C. H. Wooddy, *The Chicago Primary of 1926*, chap. ix.

²⁰ C. E. Merriam, *op. cit.*, p. 269. On this subject, see Peter Odegard, *op. cit.*,

might give the impression that the candidate is either a sissy or a highbrow. The candidate with large physical stature has an advantage in a political campaign. The more lodges to which he belongs, the better. His religion, his marital status, and whether he was born a poor boy are all factors to be considered. If the candidate was born in the city and has been a "lifelong resident," that will help. They may have no bearing whatever upon his ability to discharge the duties of the office he seeks, but they are factors in his ability to get votes.

Showmanship is an important asset of a candidate in political campaigns. "Jimmie" Walker of New York, "Big Bill" Thompson of Chicago, and "Sunny Jim" Rolph of San Francisco are examples of successful candidates who were masters of the art of showmanship.²¹ Mayor LaGuardia of New York was a good mayor but he saw fit—probably it was necessary—to resort to showmanship. Even in smaller cities personality is an important factor; a "good fellow" has a distinct advantage in a political campaign. "It" is an asset in politics as well as in the movies. Since the issues in local elections are seldom clear cut, personalities usually enter into campaigns.

Psychology must be used in the selection of campaign issues. The problem is to select issues that will appeal to the voters; issues that might alienate groups of voters must always be avoided. The English politician who said that a certain issue which was under consideration was no good because there was "not a vote in it," was speaking realistically.²² Former Mayor Thompson of Chicago is reported to have said that his "America First" was a good campaign slogan "because there's nothing to argue about."²³

Appeal to special interests is a favorite device in municipal campaigns. This may be a direct appeal to the peculiar special interest of the group, or it may be merely the recognition of its existence and importance. Appeal is made to occupational groups, veterans, frater-

²¹ For interesting sketches of American mayors, see *Nat. Mun. Rev.*: vol. xv, p. 158, Hylan of New York; p. 205, Smith of Detroit; p. 253, Curley of Boston; p. 390, Dever of Chicago; vol. xvi, p. 111, Dahlman of Omaha; p. 164, Miller of St. Louis; vol. xvii, p. 27, Cryer of Los Angeles; p. 203, Hodgson of St. Paul; p. 317, Holcombe of Houston; p. 514, Hague of Jersey City; vol. xviii, p. 16, Lodge of Detroit; p. 68, Seasongood of Cincinnati; p. 163, Rolph of San Francisco; p. 377, Ashley of New Bedford.

²² G. Wallas, *Human Nature in Politics*, p. 127.

²³ 17 *Nat. Mun. Rev.* 663 (Nov., 1928).

nal groups, and even religious groups. Newspaper support and endorsement by leaders of the group are sought. Support by foreign-language newspapers and by leaders of the various racial groups is very valuable. The same technique is applied to occupational groups, such as labor unions and manufacturing associations.

Former Mayor Thompson's campaigns in the Negro sections of Chicago furnish an excellent illustration of the appeal to race. The degree of his success in appealing to the Negro is shown by the fact that in the four primary elections at which he was a candidate for mayor he received over 80 per cent of the total Republican primary vote in the second ward, which had a larger proportion of Negro voters than any other ward in the city. He secured their support in various ways, such as appointing them to public office and giving them places on his ticket; but much of his success was the result of his showmanship and racial appeal in campaigns. When one of his opponents, in referring to Thompson's appointments of Negroes to city jobs, called the City Hall "Uncle Tom's Cabin," Thompson capitalized on this in the Negro sections, saying that was what happened "when I gave what was due you." Mayor Thompson got his start in politics by having a Negro place his name in nomination for alderman before a ward convention. He referred to this in later years in his campaign in the Negro sections, and went on to imply that he had shown his gratitude by his public acts. The following excerpt from one of his speeches is illustrative:

When I got an ordinance for the first kiddies' playground, Bishop Carey got me to put it across the street from his church at 24th and Wabash. I got the ordinance. Thompson was responsible for that and the Negroes got the playground and Bishop Carey was responsible for that. In other words, the first municipal playground for kiddies in the world, and which started a world-wide movement, was built where the Negroes had the most show. White people from near-by came over and said they wanted it in their neighborhood. I said to this, "I see you have a fine house and yard with fences around them and nice dogs but no children; I'll build a playground for children and not poodle dogs."²⁴

²⁴ H. F. Gosnell, *Negro Politicians*, p. 50. Also see R. J. Bunche, "The Negro in Chicago Politics," 17 *Nat. Mun. Rev.* 261 (May, 1928).

In other sections, or in other cities, the same tactics are used to win votes. The appeal may be to labor, the unemployed, the church element, the liberals—depending upon what the net result in votes will be. In the 1945 mayoralty election in New York, the policy of the national government toward the Palestine question and the plight of the Jews in Europe was stressed. It was an appeal to a minority group on an issue having little or no relationship to the administration of public affairs in that city.

The primary purpose of both the campaign issues and the speeches is to get votes. "Belief in the soundness of the position is, in most cases," according to Frank R. Kent, "a secondary matter, and almost invariably expediency is the keynote of every public utterance."²⁵ The candidate must talk in generalities, he must evade issues, he must acquire "the fine art of seeming to say something without doing so."²⁶ A candidate who declines to dodge or evade, and who refuses to appeal to prejudice or cater to class cannot go far in American city politics.

Mayor Thompson of Chicago was a master of political showmanship. Large in stature, he wore a sombrero—which to the crowd meant that he was a real man, a commoner and not a highbrow. In the mayoralty campaign of 1927 he rose to the heights—or possibly fell to the depths—of political showmanship. It was in the summer of 1926 that he used his famous rat stunt. He walked on to the stage of a downtown theater carrying two caged rats, representing two of his then political enemies, Dr. John Dill Robertson, and Fred Lundin. Thompson, addressing the two rats as "Doc" and "Fred," revealed to the audience how they, as former allies, had deserted him and earned the name of rat. This was shownmanship; but a more dramatic part was to follow. The scene has been described as follows:²⁷ "The crowd staged a feverish demonstration. When a modicum of quiet had been restored, Big Bill said he would turn the two rats loose in the audience, as an illustration of the menace of 'Fred' and 'Doc' at liberty. The theatre was emptied in a trice, the hub-bub punctuated sporadically with the screams of women and the loud nervous laughter of the stronger sex. Everybody shouted

²⁵ F. R. Kent, *Political Behavior*, p. 200.

²⁶ *Ibid.*, p. 73.

²⁷ John Bright, *Hizzoner Big Bill Thompson*, p. 258.

encouragement to Thompson, who stood laughing heartily on the platform." This meeting has been described as "the sensation of the month. The exhibition was vulgarly conceived and executed, but it was dramatic and it was effective. . . . It was a huge success."

Another gem uttered by Thompson in this campaign illustrates the appeal that was made for the selection of mayor of the second largest city of the country. Referring to Dr. Robertson he said: "The doc is slinging mud. I'm not descending to personalities, but let me tell you that if you want to see a nasty sight, watch Doc Robertson eating in a restaurant. Eggs in his whiskers, soup on his vest: you'd think he got his education driving a garbage wagon."²⁸ It was in this campaign that Thompson promised to bring Americanism back into the Chicago schools, to replace "pro-English histories" with histories that stood for America first, to appoint a patriotic school board which would in turn discharge the superintendent of schools who was accused by Thompson of being pro-English. In this connection, Thompson shouted to his audiences, "If George comes to Chicago I'll crack him in the snoot."

The question arises as to whether such buffoonery pays; that is, does it get votes and win elections? The result of the campaign may answer that question in part. Thompson was elected mayor of Chicago for the third time, defeating Mayor William Dever and Dr. Robertson. Though Dever was generally considered to have made a good mayor, he was not an actor and he refused to indulge in showmanship. The voters seemed to be more interested in showmanship than in ability in administering the affairs of public office.

Chicago celebrated "A Century of Progress" in 1933. A study of the technique of municipal campaigns and of the type of appeal made to the voters of that city indicates that there is need of further progress in the functioning of democratic government. When such humbuggery is used in American election campaigns, one is inclined to agree with Harry Elmer Barnes that "it is not cerebration, statistical thoroughness or impeccable logic which counts in party success in a democracy. It is the ability to catch and hold the imagination of the mob."²⁹

In a campaign for the election of the chief executive of the second largest city in the country, that has thousands of employees

²⁸ Quoted in *ibid.*, p. 259.

²⁹ Harry Elmer Barnes in the Introduction to John Bright, *op. cit.*, p. xx.

and spends millions of dollars each year, it seems as if there might be some discussion of issues relating to the administration of public affairs. As has been pointed out earlier, the chief question before the voters should be the ability of the candidate honestly, adequately, and intelligently to perform the duties of the office. Appeals such as those used in the Chicago campaigns discussed above are not designed to aid the voter in arriving at a correct decision on this point. The important thing seems to be to give the voter a show. "It is much more necessary," says Frank R. Kent, "than to have either an argument, ideas or issues."³⁰

The question may arise as to whether these Chicago campaigns were not exceptional. If exceptional, it is in degree rather than kind. Though not carried to the absurd length depicted in these particular campaigns, the same thing is being practiced in many American cities on a lesser scale. Where there is a college or university in the city, the fact that a candidate is a former athlete and a "letter man" is a great asset. Endorsement of a candidate by a visiting stage celebrity has little to do with his ability to discharge the duties of mayor of the city, but it has been used—and it probably gained some voters. Using an airplane to write a candidate's name in the sky with smoke does not indicate much respect on the candidate's part for the intelligence of the people—but it probably gets some votes. First place on a ballot should not be important if we have intelligent and thoughtful voting. But provision is often made for the rotation of names on the ballot in order to give all candidates an even chance. First place on a primary ballot in Cook County, Illinois (Chicago), has been estimated to be worth 20,000 votes.³¹ One is almost led to agree with Graham Wallas that in a democracy we have tended "to exaggerate the intellectuality of mankind."

RECENT EFFORTS TO GIVE PUBLIC OPINION A MORE SUBSTANTIAL BASIS

The question arises as to whether some effort should not be made to improve the level of municipal campaigns so that candidates will rise and fall on some basis other than showmanship, buffoonery,

³⁰ F. R. Kent, *Political Behavior*, p. 104.

³¹ C. H. Wooddy, *op. cit.*, p. 93. Also see R. C. Brooks, "Voters' Vagaries," 10 *Nat. Mun. Rev.* 161 (Mar., 1921).

and hokum.³² It is an unfortunate situation when an elective officeholder feels that his continuance in office will not depend upon his record. Regardless of how good his record may be, he knows that campaign technique will be an important factor in determining whether he will continue in office.

One of the reasons why democratic government has not functioned more intelligently in our cities is because ordinary men and women have found it difficult to secure information about the government of their city. To meet this situation, efforts have been made in some cities to assemble and distribute information about governmental activities.

(a) *Municipal Reports*

Greater publicity regarding facts about the government of the city given by the government itself—treating it as a municipal function—is one means of distributing this information.³³ The electorate cannot be expected to pass judgment upon an administration, to perform an “audit of governmental affairs,” without having facts on which to base its decision. Public reports are intended to serve this purpose. By giving the citizen the facts, it is hoped to keep municipal campaigns based on material issues and to exclude irrelevant questions. It will serve as an incentive for a city official if it tends to limit the campaign to a discussion of his record in office, and if he can feel that political ballyhoo during the campaign will not be the determining factor in the election results. Public reporting thus seeks to give public opinion a sound basis in facts. It should “prevent the misrepresentation of the conduct of government

³² In a consideration of public opinion in political campaigns the following studies are helpful: C. W. Smith, *Public Opinion in a Democracy* (New York, 1939); William Albion, *Public Opinion* (New York, 1939); H. L. Childs, *An Introduction to Public Opinion* (New York, 1940).

³³ On municipal reporting, see C. E. Ridley and H. A. Simon, *Specifications for the Annual Municipal Report* (Chicago, 1939); *Municipal Year Book*, vols. 5, 6, 7, 8 (1938, 1939, 1940, 1941), section on municipal reporting; H. C. Beyle, *Governmental Reporting in Chicago* (Chicago, 1928); Wylie Kilpatrick, *Reporting Municipal Government* (New York, 1928); Phillips Bradley, “Local Government Is News,” 56 *Am. City* (Jan.-Dec., 1941), a series of twelve articles on municipal public relations. For the ten-year period ending in 1937, Clarence E. Ridley prepared an annual appraisal of municipal reports for the *National Municipal Review* which was published in the January issue of that publication.

which is inevitable with the lack of an authentic record and report." The present situation supports the expression that "the things a voter is 'down on' are usually the ones he is not 'up on.'" ³⁴

Such facts are often given to the citizen in an annual municipal report. The contents of such reports vary, but they usually show the functions performed, the governmental organization by means of charts, the cost of government, and a directory of city officials. In recent years there has been great improvement in municipal reports, officials having learned not only what to report but how to report it. More improvement in this direction is needed if the reports are to enable the citizen to evaluate his municipal government and to determine whether services are being provided at a minimum cost. ³⁵

The methods used by cities to distribute their reports vary. Although mailing is the most frequent method of distribution, city employees—policemen, firemen, or garbage collectors—are used in some cities. Other methods include distribution through clubs and civic groups, and distribution at the city clerk's office to those who call for copies, or at the treasurer's office when taxes are paid. Copies are usually placed in the city and high-school libraries, and extensive use of them is made in high-school classes in civics in many cities. A summary of the report may be printed in the newspapers, and publicity given to the fact that a copy can be obtained at the city hall. A briefer type of report limited to city finances—tax leaflets—is being used in several cities. These are generally mailed with tax or utility bills and are designed to help the citizen answer the frequently asked question: "Where does the tax dollar go?"

(b) *The Press*

Improving the relations between the press and the government has also been used to inform the public in a more intelligent manner

³⁴ *Public Reporting*, report by the National Committee on Municipal Reporting (New York, 1931).

³⁵ R. H. Custer, "Annual Municipal Reports—Chicago Model," 21 *Pub. Management* 291 (Oct., 1939); *Municipal Year Book*, 1940, p. 248; Phillips Bradley, *Making Municipal Reports Readable* (Concord, New Hampshire, 1935). For a study which raises serious doubts as to whether municipal reports are effective, see Miriam Roher, "Education of a Citizen," 30 *Nat. Mun. Rev.* 195 (April, 1941).

about urban problems and the way they are being met. Some city officials have in recent years been making greater use of the newspaper to convey to the citizens information about the government of their city. In addition to the information given out daily, copies of monthly reports and a digest of the annual report are prepared for the press. By giving the citizen more information about the work of the city and its government, additional activity on the part of city officials along these lines should stimulate his interest in civic affairs.³⁶

(c) *The Radio*

The radio is now being utilized in more than 45 cities of over 50,000 population to give information to citizens about their government.³⁷ Five cities—New York City, Dallas, St. Petersburg, Camden, and Jacksonville, Florida—own stations, but most cities rely upon privately owned stations for this purpose. The nature of the programs vary; some have regular daily or weekly programs, and others use the radio for special purposes only, such as tax collection drives or fire prevention campaigns. Dallas, Texas, and Rochester, New York, may be taken as illustrative of the cities which have made successful use of the radio to inform the citizens about their government. The municipal radio series in Dallas, "This is Dallas," is broadcast weekly over the municipally owned station WRR. The programs, which are dramatized under the direction of the Dallas Little Theatre Group, are devoted to the services rendered by the city departments. Three fictional characters, Mr. and Mrs. John Dallas and their son Johnnie, are taken on an imaginary visit through a city department. The little-theatre group cooperates in the presentation of the program, character parts being taken by them, along with department heads and city employees. The weekly radio feature in Rochester, "A Day at City Hall," is given over a privately owned station which installed a line to the city hall, the broadcasts

³⁶ On press relations in city government, see J. L. Franzen, "Reporting by Means of the Press," *City Manager Yearbook*, 1931, p. 110; C. H. Woody, "Press Relations in City Management," 13 *Pub. Management* 260 (Aug., 1931).

³⁷ The sections in the *Municipal Year Book* on municipal reporting give the latest developments in the use of the radio by cities for reporting purposes. Also see D. G. Rowlands, "City-Owned Radio Broadcasting Stations," 23 *Pub. Management* 204 (July, 1941).

originating in the office under discussion in the particular week. A city official answers the questions that are very frequently asked regarding the duties of his office.

Greater use of this new medium of communication will probably be made in the future for informing people about municipal activities. A few years ago, an official of one of our large broadcasting companies said: "Local radio stations generally would be happy to devote a portion of their time for debates between proponents and opponents of important local questions. Unquestionably they would be willing to set aside definite periods during the week when the city officials could report to the people of the city the general condition of the city's affairs."³⁸ Experience has in general supported this statement. Most local stations have been willing to provide free time to cities, and have in some cases provided free script writers to assist in preparing the program.

(d) Motion Pictures

Motion pictures are used as an information-distributing medium in some cities.³⁹ Rochester, New York, and Winnetka, Illinois, were pioneers in the use of this method of informing citizens about their government. The movement has since spread, eight cities producing municipal movies in 1939 and about the same number being made in 1940. Colored film is being used by several cities. The movies are shown at luncheon and other club meetings, in churches and schools, and in homes. The effectiveness of this method should be explored. Dallas, Texas, has recently produced a movie at a cost of \$1500 which will supplant for a few years the city's annual report.

(e) Budget Hearings

The suggestion has been made that budget hearings be used to report to the citizens what is being done by the city government.⁴⁰

³⁸ Quoted in D. E. Gilman, "Reporting by Radio," *City Manager Yearbook*, 1931, p. 115.

³⁹ S. B. Story, "Motion Pictures as an Information Medium," *City Manager Yearbook*, 1931, p. 133; H. L. Woolhiser, "Motion Pictures as a Public Reporting Medium," 13 *Pub. Management* 289 (Sept., 1931). Also see section in the *Municipal Year Book* on municipal reporting; D. G. Rowlands, "Use of Movies in Reporting to Citizens," 23 *Pub. Management* 67 (Mar., 1941).

⁴⁰ J. P. Broome, "Reporting Through Budget Hearings," *City Manager Yearbook*, 1931, p. 112; 18 *Pub. Management* 88 (Mar., 1936).

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Public hearings before the budget ordinance is adopted are required in several states. Generally, however, few citizens attend such hearings, and most of those who do come are there to obstruct action rather than to gain information. Some city officials are seeking to make budget hearings more popular by making them more interesting. If this can be done, such hearings should become an effective agency for public reporting. A few years ago the city-manager of Trenton, New Jersey, gave several daily broadcasts on the city budget to acquaint people with the problems involved and to solicit attendance at the public hearings which were to be held.

(f) *Municipal Research Bureaus*

Municipal research bureaus have also been of value in giving citizens accurate information about their city and thus tending to put public opinion on a sound basis.⁴¹ These governmental research agencies are usually supported by contributions from a group of public-spirited citizens. In some cities, the work is carried on by the Chamber of Commerce, and in others such agencies are connected with the city government and supported from public funds. The first municipal research agency, the New York Bureau of Municipal Research, was created in 1907; since that time the movement has spread until research bureaus are now found in over 100 American cities.⁴²

Investigations of various phases of municipal government are made by research bureaus. One of the objectives of the municipal research movement is the development of better methods of administration. But the development of public opinion favorable to and demanding improvement in government is also important. As stated by William E. Mosher, the research bureau should look to the educa-

⁴¹ "The Search for Facts in Government," report prepared by the Governmental Research Association, 22 *Nat. Mun. Rev., Supp.* 301 (June, 1933); W. H. Nanry, "Reporting Through Research Bureaus," *City Manager Yearbook*, 1931, p. 129; Lent D. Upson, "Contributions of Citizen Research to Effective Government," 199 *Annals of the American Academy of Political and Social Science* 171 (Sept., 1938); H. G. Fishack, "The Future of the Municipal Research Bureau," 25 *Nat. Mun. Rev.* 714 (Dec., 1936); S. Detmers, "A Plea for Research," 24 *ibid.* 522 (Oct., 1935); Governmental Research Conference, *Twenty Years of Municipal Research* (New York, 1927); D. B. Truman, *The Educational Functions of the Municipal Research Bureaus* (Chicago, 1936).

⁴² For an excellent study of the movement, see Norman N. Gill, *Municipal Research Bureaus* (1944).

tion of both the public official and the citizen.⁴³ It must sell good government, improved practices and procedures, both to the citizens and to the officeholders. Public officials can proceed with changes and improvements only insofar as public opinion permits. And if public opinion is aroused and demands changes, the officials tend to respect the desires of the citizenry. Some of the bureaus have weekly publications which are sent not only to their financial supporters but to interested individuals and organizations in the city. Newspapers give wide publicity to the findings and recommendations of such agencies. The research bureau, through fact finding and the dissemination of information, has thus become an important agency in forming public opinion.

(g) *Citizen Advisory Groups*

Citizens are often appointed to boards or commissions, such as park and library boards and city-planning commissions.⁴⁴ They have frequently been appointed to special committees to recommend action on particular questions, such as the acquisition by the city of a municipal utility or the location of a new public building. Advisory boards have also been established to work with administrative officers or commissions. They have been especially useful in local government in the fields of housing, recreation, and social services. In recent years some cities have attempted to devise new plans to enable citizens to participate in the determination of general policies. A few years ago the mayor of Ames, Iowa, organized the heads of each of the civic groups in that city into a "Council of Presidents," with 30 members. The objectives of the council, which holds monthly meetings, have been stated as being "to extend the knowledge and understanding of municipal affairs, to encourage the free exchange of ideas, to become an agency of public relations whenever possible, and to mold public opinion for the improvement of Ames."⁴⁵ In 1940, Berkeley, California, inaugurated a plan whereby ten citizens were invited to attend each meeting of the city council. The letter

⁴³ W. E. Mosher, "Reflections on Governmental Research," 28 *Nat. Mun. Rev.* 725 (Oct., 1939).

⁴⁴ See A. W. Macmahon, "Advisory Boards," 2 *Encyclopaedia of the Social Sciences* 609, and references cited; L. D. White, *Introduction to Public Administration*, pp. 92-94; J. M. Pfiffner, *Public Administration* (1946), pp. 549 ff.

⁴⁵ See 28 *Nat. Mun. Rev.* 660 (Sept., 1939).

of invitation sent out by the mayor read in part: "As a fellow stockholder in the business of Berkeley, I invite you to be a guest of your board of directors. The purpose is to afford opportunity to obtain a first-hand knowledge of the way your government operates."⁴⁶

Most cities could profitably make greater use of advisory boards. They have been praised as a means of "community participation and good will," as a device for "democratizing administrative machinery,"⁴⁷ and as "one of the most fruitful contributions of 20th century administrative inventiveness to the task of government."⁴⁸ There are some persons, however, who look upon the advisory lay board as inexpert and meddlesome and detrimental to efficiency. Experience in our cities does not warrant this criticism. The advantage of community participation and good will justifies greater use of such boards.

(h) Citizen Organizations

Citizen organizations or groups have also been of value in many cities in forming a more enlightened public opinion about civic affairs.⁴⁹ The value and effectiveness of such organizations in securing "good government" have been demonstrated, and this new tool of democracy has received increased attention in recent years. The significance of these organizations is shown by the fact that their activities are now reviewed in each issue of the *National Municipal Review* in a regular section entitled "Citizen Action." Since government is carried on for the benefit and at the expense of the citizen, "what is more proper," asks Howard M. Kline, "than that the citizens should have some voice in, and control over, both the functions and the expense?"⁵⁰ They have this, of course, at the ballot box; but it is

⁴⁶ 22 *Pub. Management* 20 (Jan., 1940).

⁴⁷ L. M. Drachsler, *Advisory Bodies and Public Housing in New York City*, Department of Investigation, New York City (1940). For a list of references on the advisory board, see pp. 2-4.

⁴⁸ Herman Finer, *English Local Government*, p. 292.

⁴⁹ H. P. Jones, "Citizen Groups, Tool of Democracy," 199 *Annals of the American Academy of Political and Social Science* 176 (Sept., 1938); C. P. Taft, *City Management: The Cincinnati Experiment* (1933); *The Cincinnati Plan of Citizen Organization for Political Activity*, report of Committee on Citizens' Charter Organization of the National Municipal League; S. H. Evans, "Citizen Action Through Community Councils," 23 *Pub. Management* 43 (Feb., 1941).

⁵⁰ Howard M. Kline, "Citizen Groups in Review," 30 *Nat. Mun. Rev.* 574 (Oct., 1941).

through organized effort—citizen organizations—that it can be made more effective.

The methods of citizen organizations vary.⁵¹ Some are engaged in fact-finding and are content to make the facts available and hope that they will secure results. Others are not content to “let the facts speak for themselves” because, on the basis of experience, they have found this ineffective. Instead, they bring pressure to secure the reforms they favor, such as the merit system, improved budgetary practices, or the council-manager plan. A third approach used by some citizen organizations is to secure the election of the right persons to public office. By control of the personnel elected to public office they seek to secure the proper administration of public affairs.

Many citizen organizations have a paid secretary and collect large sums through dues or contributions to carry out their programs more effectively. The secretaries of some of these organizations are the unheralded heroes of municipal reform. They have done the work and have been the guiding spirits in improving municipal government but have not received the credit in the public eye. Their reward must come in a job well done—improvement in local politics and administration.

Among the outstanding citizen organizations are the Citizens Union of New York, the Cincinnati City Charter Committee, the Detroit Citizens League, the Los Angeles Civic Committee, the Seattle Municipal League, the Kansas City Civic League, the Chicago Civic Federation, the Kenosha Civic Council, the Minneapolis Civic Council, the Houston Citizens Charter Committee, the Citizens League of Cleveland and the Indianapolis Citizens Committee. These are merely illustrative. Over 600 cities have permanent, non-partisan citizen organizations working for the improvement of local government. These cities have found that the citizen organization offers an effective means of carrying out needed local government reforms as to organization, procedures, and practices, and also as to the personnel elected or appointed to public office.

The Municipal Voters League of Chicago was formed in 1896 to investigate, and then to seek to educate the public so as to bring

⁵¹ See classification of citizen groups by Kline in *ibid.*, p. 577.

about, the election of honest and capable men to public office.⁵² The City Charter Committee in Cincinnati has a similar object. The various clubs of the latter city—the City Club, the luncheon clubs, the Women's City Club, the League of Women Voters—are used as forums for the discussion of problems of city government. Citizen organizations such as these can be instrumental in maintaining sustained citizen interest in city government, in focusing attention upon the government and its problems, and consequently in excluding immaterial and irrelevant questions from municipal campaigns.⁵³

Such organizations may result from the revolt of citizens against the practices and policies of the men in office. The Better Government League of Grand Rapids, Michigan, which was formed in 1934 is of this type. The revolt was successful and the league elected all its candidates.⁵⁴ Other organizations of this type have frequently been formed to secure a change in the form of government, usually the adoption of the council-manager plan and the election of men who are sympathetic with its principles. The Charter League founded in Schenectady, New York, in 1934 is of this type.⁵⁵ A possible weakness of such organizations, which has actually appeared in many cities, is that they may secure their immediate objective and feel that their work is done. If they are to succeed they must continue to be militant and alert. As stated by a former city-manager, "The people must be brought to a realization that good government, once achieved, does not of necessity continue, unless eternal vigilance is exercised to protect it from attack. This vigilance can function through a strong, militant, permanent organization of determined citizens."⁵⁶ The experience in Cincinnati bears witness to the effectiveness of citizen organizations in securing and retaining good government. The success of council-manager government in that

⁵² See F. J. Goodnow and F. G. Bates, *Municipal Government*, p. 177.

⁵³ Henry Bentley, "Maintaining Sustained Citizen Interest in Government," *City Manager Yearbook*, 1933, p. 178; H. K. Nowlan, "The Value of Citizens' Associations as Reporting Media," *ibid.*, 1931, p. 120.

⁵⁴ M. R. Quick, "The Recapture of Grand Rapids," 23 *Nat. Mun. Rev.* 299 (June, 1934).

⁵⁵ P. L. Alger, "The Charter League of the Electric City," 26 *Nat. Mun. Rev.* 234 (May, 1937).

⁵⁶ C. E. Hickok, "Citizen Responsibility Under the Manager Plan," 23 *Nat. Mun. Rev.* 14 (Jan., 1934).

city can be attributed in large part to the thorough organization and the continued interest and work of the charter committee.

The citizen councils that have been formed in several cities should be distinguished from citizen organizations.⁵⁷ The citizen council is a central organization or federation of existing citizen and civic organizations, whose purpose is to focus the attention of all civic groups in the community upon major problems. It serves as a central clearinghouse and guiding spirit for organized citizen activity in attacking community problems. The citizens' advisory councils which have been promoted by the National Municipal League are of this type. The Kenosha Civic Council, which may be taken as illustrative of this type, represents 74 civic organizations, each of which is entitled to send two members to monthly meetings. The organization, which has been functioning for almost twenty years, has been effective in increasing interest in local government, and its membership is such that it has been able to reach a large number of people. The public officials have respected the council, knowing that it expressed accurately the opinions of the people.⁵⁸

Organized citizen effort offers a means of making democracy work. The first need in a democratic society is to give the citizen facts about his government and about the persons who administer public affairs so that he may form sound judgments as to public policies. The second need is to provide some means by which the judgment of the people can be effectively translated into action as to the form of government, the officers selected, and the policies adopted. Citizen organizations are effective instrumentalities in forming and carrying into execution an enlightened public opinion. As Professor Kline says, "It is not too much to say that local citizens' groups have been instrumental in every important legislative and administrative improvement made in at least our larger cities during the last decade."⁵⁹ The effectively organized civic organization, with a full-time executive secretary and a program for the better administration of public affairs, "gears the citizen to his government," according to Russell H. Ewing, "in such a way that his influ-

⁵⁷ Howard M. Kline, *op. cit.*, pp. 574, 633.

⁵⁸ W. C. Wichman, "Kenosha Citizens in Action," 29 *Nat. Mun. Rev.* 164 (Mar., 1940).

⁵⁹ Howard M. Kline, *op. cit.*, p. 637.

ence cannot be short-circuited by the boss."⁶⁰ Citizen participation in and support of the work of these organizations offers an effective means of securing "good government."

CONCLUSION

The question arises as to whether the people can be interested in city affairs by the dissemination of sound information. Will such information lead to the formation of public opinion which will be less susceptible to emotional campaign appeals? Those who still have faith in democratic government believe that the difficulty has been the fact that the opportunity for learning the facts has not been available, rather than that the public did not care. The economic depression following 1929 and the pressing burden of taxation led to an increased interest in local government on the part of the electorate. The ghost of democratic local government may yet arise and function in the American city.

Attempts by public officials to interest citizens in their government are commendable. As stated by one writer in a recent study of municipal public relations, "Providing information on the basis of which citizens can make decisions on policy matters is necessary in a democracy." But, as this writer points out, the motivation of the official who makes the report is also important.⁶¹ Is there a real sense of accountability on the part of the city official, a desire to know and respect the wishes of the citizens on fundamental policies, or is he using government publicity and reporting to entrench himself in office? Government reporting should be used to sell city government to the citizens, not to sell the city administration then in power to the electorate. In short, the government report should not become a political campaign document issued at public expense. The public official's reaction to the citizen's interest in public affairs is as important as is the generation of that interest in the citizen.

⁶⁰ Russell H. Ewing, *The Civic Secretary: The New Profession* (National Bureau of Civic Research, 1946); also see his *Principles of Civic Leadership* (1943), and *The Implementation of Municipal Research Through Civic Organization*.

⁶¹ E. D. Woolpert, "Municipal Reporting and Publicity," 22 *Pub. Management* 174 (June, 1940).

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Administrative Organization in Cities

In earlier chapters the policy-forming agencies of city government were discussed. These include the electorate and the electoral process, together with the formation of public opinion. The council as the agency for the enactment of policies in the form of legislation has also been discussed. The next step in the governmental process in the American city is administration. It is the duty of the administrative branch of the city government to carry out the policies determined upon by the council. It is the policy-determining agencies of the city that decide whether a new function or service shall be undertaken by the government; the actual performance of the function becomes the task of the administrative branch of the government. A distinction may thus be made between the two important steps in the governmental process, politics and administration. The former involves the formulation of policies, and the latter covers the field of the execution of policies.¹

With the growth in functions and the resulting increase in the number of employees required to provide services for the people, the administrative branch of government becomes more important. It is for administrative employees that a large percentage of municipal expenditures are made. And it is with administrative employees that the citizen most frequently comes into contact. His impressions of government are the result of his experiences with some employee engaged in providing services for him, rather than with the policy-determining officers of the government. As Walter Matscheck says,

¹ On this distinction, see F. J. Goodnow, *Politics and Administration* (1900); M. E. Dimock, *Modern Politics and Administration* (1937).

"It is coming to be recognized quite generally that city government is chiefly an administrative matter."² Finally, administration is a continuous process that goes on twenty-four hours a day. At all hours of the day and night, administrative employees must be on the job to fight fires, to enforce the laws, and to carry out other municipal services.

The size and complexity of the administrative task in an American city becomes apparent when we begin a study of the services rendered and the number of employees engaged in this work.³ The police department of New York City numbered 16,000 men in 1945, with total expenditures of \$67,000,000; that of Chicago numbered 6500 men, with expenditures of \$21,000,000. The per capita police department expenditures varied with the size of the city, being \$7.25 per capita for cities over 500,000 population, and \$2.87 per capita for cities in the 10,000- to 25,000-population group. For fire protection New York City needed 8000 employees and expenditures of \$38,000,000; Chicago had 2800 firemen and spent \$10,000,000. The per capita fire department expenditures were \$4.09 for all cities over 500,000 population, and \$2.79 per capita for cities in the 10,000- to 25,000-population group. When to these two services are added health, parks and recreation, street construction and maintenance, traffic regulation, public welfare, and the disposal of wastes, it becomes apparent that the management of men and materials in accomplishing the purposes for which cities are created and taxes are paid becomes a task of great magnitude and difficulty. As stated by Clarence E. Ridley, executive director of the International City Managers' Association, "The importance of administration in city government today is a reflection of the growth in number of services provided by the city government and changes in city life. These changes have increased the importance and technical character of administration."⁴

The administrative side of the city is important not only in carrying out policies, but also because of the part officers and employees in this branch have in influencing the policy-determining branch. As

² W. Matscheck, "The Place of Science in Municipal Administration," 11 *Pub. Management* 583 (Sept., 1929).

³ The figures which follow are from the *Municipal Year Book*, 1946.

⁴ Clarence E. Ridley, "The Job of the City Manager," 27 *Pub. Management* 258 (Sept., 1945).

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has been pointed out in an earlier chapter, in several cities the heads of departments have been given seats in the council, with the right to take part in debate. In other cities they attend committee meetings, and their advice and recommendations unquestionably carry weight in the determination of policies. Under the commission plan, the commissioners serve in a dual capacity, acting both as department heads and as members of the policy-determining body, the commission.

Many policies originate in the administrative departments. Although in form the executive may recommend and the council enact, often it is the head of the department who suggests to the executive the need of legislation. In fact, ordinances may actually be drafted by the administrative officer in charge of a department. When new problems arise or difficulties develop in meeting old problems, the person who should be able to offer valuable suggestions is the administrative head. The administrative branch of the government does more than merely carry out policies; it is instrumental in determining what those policies shall be.

ORGANIZATION OF ADMINISTRATIVE DEPARTMENTS

In organizing and controlling the administrative branch of the city government, the object sought is to carry out as efficiently and economically as possible the policies that have been determined upon by the proper agencies. The test of a satisfactory administrative organization would thus be whether it honestly, impartially, efficiently, and economically executed the policies and provided the services which the policy-forming agencies—the city council, and the people through the use of the initiative and referendum—decided upon.

The administrative branch of the government must be so organized that the employees may perform effectively and economically the work to be done in providing services to the people. The administrative structure and departmental organization must be such that there will be coordination of effort rather than conflict and lack of cooperation. This is partly a problem of effective supervision and control by the executive, but sound organization is also important.⁵ Both

⁵ See Donald C. Stone, *The Management of Municipal Public Works*, pp. 2-3.

the type of personnel and the administrative structure are important in municipal administration. Administrative organization is thus a problem in working out relationships so that hundreds or thousands or a hundred thousand employees, depending upon the size of the city, may accomplish the purpose for which cities are created, taxes are levied, and employees hired, making the city a more satisfactory place in which to live.⁶ "Successful management," states Donald C. Stone, "is dependent upon an organization that can be so coordinated that the efforts of the employees are directed toward a common objective."⁷ A sound organizational structure will not assure effective and economical administration but it will make this possible. It is a step, and an essential one, toward securing the coordination of effort that has been referred to as "the primary element in efficient administration."⁸

In organizing the administrative branch of city government, the work to be done has been divided on the basis of the functions to be performed. This permits specialization on the part of the employees in the administrative branch; but immediately there arises the problem of coordinating activities so that all the efforts will be directed toward a common end—the general welfare. This coordination can be secured in part through organization and in part by effective executive supervision. Economical and efficient administration is the goal; and in securing this, certain fundamental questions of organization arise.

In preparing a plan of administrative organization for a city, one of the questions to be answered is the number of departments that should be provided. Obviously it is not possible to say that all cities should have a certain number of departments; neither is it possible to do this for all the cities in a certain population group. There are, however, certain principles that are of value in answering the question of the proper number of departments. One of the factors which determines the number of departments is the size of the city. Cities in the 25,000- to 50,000-population group will not need the number of departments found in New York and Chicago. Much will also depend upon the functions performed. If the city owns its water

⁶ 14 *Pub. Management* 216 (July, 1932).

⁷ Donald C. Stone, *op. cit.*, p. 7.

⁸ *Ibid.*

and light plant, a street railway or other utilities, this will be a factor in determining the administrative structure. How much attention is given to parks, playgrounds, and recreation in the city? Are many employees engaged in this type of activity, and are the expenditures large? The answers may vary greatly, even for cities of the same size. Departments needed in one city may be useless in another because of the latter's failure to perform the particular functions entrusted to those departments.

Regardless of the functions performed, there is an upper limit to the number of departments that should be provided. There is a limit to the number of departments over which an executive can exercise effective supervision. As Luther Gulick says, "Just as the hand of man can span only a limited number of notes on the piano, so the mind and will of man can span but a limited number of immediate managerial contacts."⁹ What that number is will depend upon the nature of the work in which the subordinates are engaged, and also upon the nature, temperament, and ability of the executive in charge of supervision. This principle of the limited number of supervisory relationships or responsibilities that should be entrusted to an executive is known as the "span of control."

Although it is desirable to keep the number of departments small in order to permit effective supervision by the executive, this must not be carried so far as to have within the same department services which are not related. This leads to the further question as to the principle to be followed in grouping functions, i.e., on what basis they should be related. Should they be functions which are related as to the purpose or objective they seek to attain? Or should they be grouped on the basis of the procedures which will be followed in performing the function? If the latter, are these procedures sufficiently different to provide a basis for the logical arrangement of departments?

There are four bases on which the work to be done by the administrative branch may be departmentalized.¹⁰ These are: (1) the purpose an employee is serving, (2) the process he is using, (3) the persons or things with which he deals or serves, and (4) the

⁹ "Notes on the Theory of Organization," in Luther Gulick and L. Urwick, *Papers on the Science of Administration*, p. 7.

¹⁰ *Ibid.*, p. 15.

place in which he renders his service. The best basis of departmentalization would seem to be the process the employee is using, since this involves the methods or problems of administration. "In determining whether functions are related in fact and not merely in appearance," states Professor Munro, "one should look primarily at the nature of the problems which are encountered in performing them."¹¹ A similar position has been taken by Thomas H. Reed, who says, "The criterion which should be employed generally in determining which services are related and, therefore, should be included in the same department is similarity of method rather than similarity of purpose."¹² The health work of the city may have the same purpose as the recreation program, but this does not mean they should be in the same department. Playground operation and crime prevention may in some respects have a common objective, but they should not be in the same department.

Even though the procedures are similar, this does not necessarily mean that they should be exercised by the same department. The objectives must also be related; otherwise one may be slighted at the expense of the other. Department heads are interested in objectives as well as in procedures, and they will give emphasis to the functions which they look upon with special favor. A study of specific functions leads to the conclusion that there is no single principle of departmentalization by which services can be assigned to departments with finality as to the correctness of the decision. As stated by Luther Gulick, "There is apparently no one most effective system of departmentalism."¹³ Rather, there are principles which can be of value to the administrator in setting up an administrative structure, provided these principles are applied with common sense and good judgment.

In the administrative organization will be found two main types of agencies or departments.¹⁴ There are the line agencies, which are engaged in the performance of services for which governments exist. Illustrative of these agencies are the police, fire, health, and

¹¹ W. B. Munro, *The Government of American Cities*, p. 350.

¹² T. H. Reed, *Municipal Management*, p. 84.

¹³ Luther Gulick, *op. cit.*, p. 31.

¹⁴ On the line and staff organization, see J. M. Pfiffner, *Public Administration*, chap. vi; M. E. Dimock, *Modern Politics and Administration*, chap. x; Harvey Walker, *Public Administration*, p. 91.

street departments. These departments are engaged in the substantive activity of government, in the actual delivery of service to and for the people. They are the ends for which government exists. There are other departments which may be looked upon as a means to an end rather than as ends in themselves. They are generally referred to as the staff agencies. These are the planning agencies, as contrasted with the performance or line agencies. As Luther Gulick put it, staff agencies include "those persons who devote their time exclusively to the knowing, thinking, and planning functions, and in the line [are] all of the remainder who are, thus, chiefly concerned with the doing functions."¹⁵ The staff agencies are to aid the executive; they recommend or suggest but only he takes action. Bureaus of municipal research may serve as staff agencies for the mayor or city-manager, collecting information and preparing reports on current governmental problems for his use. The Department of Investigation in New York City is another example of a staff agency.

A third type of agency found in the administrative structure is neither line nor staff as those terms have been used above. Leonard D. White applies to it the term auxiliary agency.¹⁶ Centralized purchasing and the recruitment of personnel are illustrative of the functions of this type of agency. These are the housekeeping functions formerly performed by each department for itself but now tending to be separately organized and to serve several departments. The argument advanced in support of the organization of auxiliary agencies is economy and efficiency. One purchasing or one personnel agency serving all departments obviously offers potential savings in money, as well as more effective service. In actual practice these potential savings have been realized. The principle of auxiliary agencies is sound and their use should be extended.

A much discussed question in the field of public administration is the merit of a single department head as opposed to a board or commission. Which of these methods of heading departments is to be preferred, or are there some cases where a board is preferable and others where a single head will secure better results? If the latter, what criteria will determine whether a board or a single head should be used? The single-headed department is in most cases preferable to

¹⁵ Luther Gulick, *op. cit.*

¹⁶ Leonard D. White, *Introduction to the Study of Public Administration*, chap. v.

the board or commission. Executive supervision is simplified and can be more effective where there is a single head. But the answer to whether there should be a single head or a board at the head of a department depends upon the function to be performed and the nature of the activity. Where the work is purely administrative and of a routine nature, logic calls for a single head. If the department is given powers of a quasi-legislative or quasi-judicial nature, a stronger case can be made for a board. Thus if extensive power to issue rules and regulations is conferred upon the department, public approval can be secured more readily when they are issued by a board. Where the department has the power of policy determination, there is a strong case for a board. Policies should be the result of deliberation, and this may be secured by the use of boards. Conversely, where immediate decisions must be made and speed is essential to administrative efficiency, a single head is needed. Even in cases when it is desirable to have a board, it may be advantageous to have a single executive officer to carry out and administer decisions. A single head is always more effective if the work is purely administrative.¹⁷

The above comments are directed at boards which actually head departments, resulting in a plural executive. Boards may be used in an advisory capacity only, working with the head of a department. Such a plan would give the department head the benefit of the advice of citizens who are interested in the function entrusted to the particular department. The position would carry more prestige than most political appointments since it would be obvious that the appointee was interested in being of service to his city rather than in getting on the payroll. The advisory board should be able to assist in selling the department's work to the people; this may be needed if the work is more than mere established routine. It would appear to offer a means by which aggressive and imaginative department heads may be permitted to show initiative and strike out on new paths. They can consult their advisory boards as to the wisdom of proposed action; and if they approve, such boards can be of value in selling the proposition to the people. The need of defending administrative action will be less if the people know that the action has the approval of the advisory commission.¹⁸

¹⁷ *Ibid.*, pp. 90-92.

¹⁸ As to the proper use of boards see J. M. Pfiffner, *op. cit.*, chap. vii.

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A danger with such advisory boards is that they will not be content to advise but will interfere in administrative detail. This may go to the extent of advising as to appointments—recommending certain persons. Members of the advisory board may want actually to “run things,” and become disgruntled if they are not permitted to do so. This has been a weakness of the independent boards or commissions which will be discussed in the next section.

INDEPENDENT ADMINISTRATIVE BOARDS

In some cities there are certain departments which are independent of the executive, being elected directly by the voters, selected by the council, or appointed by various other authorities such as the governor or the judge of some local court. Independent election is unsatisfactory because it provides for an administrative system without any central directing head. The desirable cooperation among the various administrative departments is lacking because the executive cannot use his removal power or other supervisory authority to coordinate the work of the departments. Election is also questionable as a means of securing the qualities desirable in a department head. Furthermore, it is contrary to the short-ballot principle which was discussed in an earlier chapter. Selection by the council, the governor, or the courts may be criticized because it provides a disjointed administrative structure without the supervisory control by one executive that is needed to secure cooperation and coordination. The comptroller is probably the most generally elected independent department head in cities. Independently selected park, library, civil service, planning, and hospital boards are found in many cities. The demerits of such a plan outweigh its merits. Greater integration or the centralization of control over the administrative structure of the American city is desirable. Coordination of activities and effort can be secured under such a plan to a degree not possible where there is no centralized control.

Unity and balance in the program of a city should be sought. This can be achieved in part through financial control by the council, but executive control and supervision are desirable. It is on this basis that the use of independent administrative boards can be questioned. While many such boards have had records of successful accomplish-

ments in the past, the trend in recent years has been toward greater integration in municipal administration. John M. Gaus has defined organization as "the relating of efforts and capacities of individuals and groups engaged upon a common task in such a way as to secure the desired objective with the least friction and the most satisfaction to those for whom the task is done and those engaged in the enterprise."¹⁹ These objectives can be attained more satisfactorily by an integrated plan than by independent boards.²⁰ "The administrative structure," says H. G. Pope, executive director of Public Administration Service, "should be headed by a single chief administrative officer endowed with authority and responsibility for the direction and control of all administrative units."²¹

INTERNAL ORGANIZATION OF DEPARTMENTS

Assigning the administrative work of the city to departments is only the start in working out a system of organization. There is the further problem of internal organization. It is advantageous, in a department having hundreds or thousands of employees, to provide an organization within the department which provides further specialization of activity. The problem then is supervision by the head to secure coordination of activity within the department.

Although the terminology used varies in different cities, the departments are generally subdivided into bureaus, and these in turn into divisions. Through the heads of these various units, guidance and direction of the efforts of municipal employees toward a common purpose are secured. The problem is to secure coordination of effort on the part of all the employees; and proper organization is an effective means of securing this. Since the principle of specialization is applied in the internal organization of departments, as well as in setting up the departments themselves, coordination is a problem both as to interdepartmental relations and as to intradepartmental procedures.

One of the questions to be considered in connection with the

¹⁹ John M. Gaus, "The Theory of Organization in Administration," in John M. Gaus, L. D. White, and M. E. Dimock, *The Frontiers of Public Administration*, pp. 66-67.

²⁰ Cf. 17 *Pub. Management* 272 (Sept., 1935).

²¹ *Municipal Year Book*, 1946, p. 225.

administrative organization is the proper method by which to secure flexibility through changes when they are desirable. Changes in the number of departments, in the method of selecting the heads, and in internal organization may be necessary or desirable as a result of new conditions. If the administrative structure is provided for in details in the charter, changes can be made only with difficulty. This often means that the administrative machinery is inadequate for the problems to be met, and that the administrator is handicapped in securing the desired results. The same situation has arisen in the states where administrative reorganization has been retarded by constitutional details as to the structure of the administrative branch, the powers of certain officers, and their method of selection. More satisfactory results in organizing the administrative branch can be secured where these questions are met by ordinary legislative action and not frozen into a state constitution or city charter.

The recent experience in the national government raises the question of whether the executive might not be given a more important part in administrative reorganization at all levels. Insofar as it is the primary responsibility of the executive to secure results, a strong case can be made for giving him greater authority in determining the structure of the administrative branch of the government. He can be held directly responsible by the people for results achieved if he is elective, and indirectly responsible if he is appointed. There is also the check by the legislative branch through its control over appropriations. Finally, there can be some check such as was provided in the case of the reorganization plans of the President. Administrative organization or structure may be looked upon as a tool by which the executive performs his duties. And the executive should largely determine the most effective tool to secure the desired result. At least the initiative in these questions might be given to him, with a veto power vested in the council.

POPULAR CONTROL OVER ADMINISTRATION

With the increase in the functions performed and the resulting increase in the number of employees, control over the administration becomes more important. The problem is how the actual administration of the city's complex services can "be delegated to persons who

are competent for the job without sacrificing control by the public over the policies followed by its 'servants.'²² The administrative branch must cooperate with the policy-determining branch of the government. The administrator should aim to carry out the spirit of the law, that is, the policies laid down by the council. Some method of control must be exercised by the people over the administration to guarantee protection against arbitrary action.²³ In the American city, various methods of popular control, both direct and indirect, have been evolved. The selection and removal of department heads offers one means. The tendency has clearly been toward the single-headed department, with the head appointed by either the mayor, the commission, or the city manager, depending upon the type of government. As has been pointed out in an earlier chapter, in the commission plan the commissioners serve in a dual capacity, acting both as members of the commission and also as heads of departments. Popular election is still used for some departments which have a single official in charge. Boards, both elective and appointive, are used for some departments. Schools, for example, are generally controlled by an independently elected board; libraries, on the other hand, are often placed under the control of an appointive board. A study of charter provisions on administrative departments reveals that there is great variation in practice not only from city to city but also within the same city, depending upon the type of function to be performed, or possibly upon chance.

The greatest degree of control over the administration has been vested in the city council.²⁴ The council's control over finances is the greatest weapon at its disposal. Through appropriations the council can develop or check the various branches of the administration. The power to approve appointments to administrative positions is also of some value. Even for positions on the classified list, in some cities at least, the members of the council have some extra-legal, political control. This, however, is a violation of the merit principle and should be condemned. The control here is for the sole purpose of spoils and not to improve or curb the administration for the good of

²² Clarence E. Ridley, *op. cit.*, p. 258.

²³ On this point, see F. J. Goodnow, *Principles of the Administrative Law of the United States*, pp. 370-372.

²⁴ For a discussion of the control of the administration by the legislature and the electorate, see L. D. White, *op. cit.*, chap. xxxvi.

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the service. The ordinance power is sometimes used to control administrative policies. For example, the question of removals, vacations, sick leave, reinstatement, etc., is often regulated by municipal ordinance. Finally, when conditions in the administrative branch of the city become too bad, resort can be had to investigation by the council. Such investigations generally result in improved administrative practices. Graft, corruption, and inefficiency in the administration can be controlled in part by council investigations.²⁵

The people in our cities do not rely entirely upon the council to control the administration. Popular election and recall of some purely administrative officers still exist, despite the efforts to secure a short ballot. Short terms for the chief executive who appoints the higher administrative officers also offer an indirect means of popular control over the administration. The initiative and referendum have been resorted to in some cases for this purpose. The use of these devices to settle administrative questions is all too frequent. Finally, there is the power of public opinion to control the administration. Favoritism, laxness, or inefficiency on the part of administrative employees may be corrected in part by an aroused public opinion. Press reports of brutality to prisoners by police officers, laxness in law enforcement, or favoritism in assessing property for taxing purposes often lead to a correction of the evil in response to the demands of public opinion.

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Personnel Administration

With the growth in services rendered by municipal governments, there has been an increase in the number of employees. In 1945, the total number of non-school local government employees was 1,415,000. Some indication of the personnel problem in local government may be given by data on particular cities. In 1944, New York City had 138,655 employees, not including teachers and other school employees; in Chicago, there were 25,995 non-school employees; and Philadelphia had 20,012. Cleveland, a city of 878,000 population, had 15,161 non-school employees; Rochester, New York (325,000 population), had 3574; and Miami, Florida (172,000 population), had 2499. Even in the smaller cities, the number of employees is such that good personnel administration is of significance. Lansing, Michigan (79,000 population), had 998 non-school employees; Asheville, North Carolina (51,000 population), had 388; and Beloit, Wisconsin (25,000 population), had 285.¹ The number of employees varies greatly, even for cities of the same size, depending upon the services rendered, and especially upon the extent to which utilities (water, light, transportation, etc.) are municipally owned.

The success of a city government in performing the functions entrusted to it depends in large part upon its system of personnel administration. This involves the selection and retention of qualified persons. Promotion on the basis of merit, retirement of those unable as a result of advanced age to continue to perform their duties, a satisfactory salary schedule including equal pay for like work in all departments, the avoidance, or at least the peaceable settlement of labor disputes, are among the factors to be considered in working out a personnel program for cities. The manner in which

¹ *Government Employment*, Bureau of the Census (July, 1946).

these questions are met will determine in large part the capacity and character of the men and women attracted to the public service; and as pointed out in the Commission of Inquiry on Public Service Personnel report of 1935, this will in turn determine the success or failure of government and the kind of service it renders.²

SELECTION OF ADMINISTRATIVE EMPLOYEES

As long as positions in the city service are looked upon as rewards for party service, efficiency on the part of employees cannot be expected. In such cases, efficient and effective service to the party is the basis of selection; and continuance in power depends more upon extraneous factors, such as the social and charitable work of the party organization, than upon devotion to the duties of office. The turnover of employees under such a system is great, and expert ability in the performance of duties is not secured. "To the victor belong the spoils" is not conducive to successful municipal administration. It may be good politics but it is not good public administration.

During the latter part of the nineteenth century the spoils system was subjected to attack. With the increase in functions, in employees needed to perform these services, and the resulting increase in expenditures for administration, ways and means of securing efficiency and economy were sought. One of the obvious ways of securing this was improvement in the personnel policies of our cities. The Civil Service Reform Association, which was formed in 1877, had as its object the abandonment of the appointment to public service as a reward for party work, and the securing of appointment on the basis of merit.³ The passage of the National Civil Service Act in 1883 marked the beginning of a new policy adopted by the national government in public employment—selection on the basis of merit. An important step in making municipal service appointments on the basis of merit was taken in New York in 1883. In that year a law was passed which provided that employees of cities should be selected by means of examinations. A law of Massachusetts in the same year established the merit system in the cities in that state.

² *Better Government Personnel* (1935), p. 15.

³ See Frank M. Stewart, *The National Civil Service Reform League*.

Since that time the movement has spread, so that by 1940 there were 869 cities that had some of their employees under a merit system.⁴ By 1945, 600 cities having a population of 10,000 or over, or 56 per cent, had a formal merit system for selecting some or all classes of employees; but only 390 of these cities, or 36.4 per cent, covered all employees. It is in the larger cities that the merit system has made its greatest progress. In 1945, 77 per cent of the cities having a population of 100,000 or over had a formal civil service system for all classes of employees; but only 27 per cent of the cities in the 10,000- to 25,000-population group had a service-wide civil service system.⁵

Various plans are used to administer a merit system for the selection of employees in the municipal service. The most general method is a local civil service commission of three or five members, with overlapping terms, appointed by the mayor. It is usually provided that the board be bipartisan. In some cities the council, rather than the mayor, appoints the commission. In council-manager cities the commission is frequently appointed by the manager. Many other plans, or variations of the above plans, are used. In Saginaw, Michigan, one member is appointed by the mayor, one by the city-manager, and one by the other two. In some cities boards of education, hospital boards, city employees—especially firemen and policemen—are permitted to participate by selecting one member of the board. A few cities have conferred upon private organizations, such as chambers of commerce, trade union councils, and business men's associations, authority to select some members of the civil service commission.

State supervision over the work of local civil service commissions is now provided in some states. In New York the state commission has power to make general rules for the guidance of local commissions, to investigate their work, and, if necessary, to remove the local commissioners from office. A similar plan is used in Ohio.

In Massachusetts, the state Division of Civil Service gives examinations, determines the relative merits of candidates, and certifies names in case of vacancies in cities and towns. A 1941 study re-

⁴ *Civil Service Agencies in the United States*, published by the Civil Service Assembly of the United States and Canada (1940).

⁵ *Municipal Year Book*, 1946, p. 134.

ported that of the 50,000 employees subject to the merit system in Massachusetts, 40,000 were on the payrolls of local units of government.⁶ New Jersey also has this plan, but its use in any city is subject to local referendum. The New Jersey law was enacted in 1908; by 1941, 12 counties out of 21, and 37 municipalities out of 565, had adopted the law by referendum; these units adopting the law represented 65 per cent of all local government service in point of number of employees.⁷ If a local government votes to make use of the services of the state civil service commission, all costs of administration are paid by the state. The service is in the nature of a grant-in-aid.

Several states now authorize the state civil service commission to perform technical services for local governments on a cost basis. California by act of 1935 authorized cities to contract with the State Personnel Board to furnish such services. Several cities have made use of these services. Other states making use of such a plan are Alabama, Minnesota, New Mexico, New York, Rhode Island, Tennessee, and Wisconsin. In Michigan, this service is rendered on a cost basis by the Michigan Municipal League. A plan by which cities may secure personnel services from some outside agency, such as a state civil service commission or a state municipal league, is especially desirable for small cities. The volume of personnel work in such cities is not sufficient to warrant their developing specialized staffs to meet personnel problems.

In some cases cities have cooperated with other local units in administering a merit system. Eight cities in Alabama have placed their merit system in the hands of the personnel board of the county in which they are located. Under a state law of 1935, several cities in Los Angeles County have contracted with the county civil service commission to administer their civil service programs. Greater use in the future may be expected of this plan of cooperation by local governments in administering merit systems. It will permit the employment of full-time personnel technicians where this would not be possible if each local unit acted independently.

⁶ W. E. Mosher and J. D. Kingsley, *Public Personnel Administration* (1941), p. 83.

⁷ C. P. Messick, "New Jersey's Merit System Pattern," 30 *Nat. Mun. Rev.* 147 (Mar., 1941).

The merit system is an attempt to remove appointment to the municipal service from politics. In too many cases, however, the commissions themselves have been appointed on a political basis. This weakness in the use of the merit system in Chicago has been expressed as follows: "The enforcement of the law is left to men appointed by the political head of the government without reference to their qualifications but with distinct reference to their political affiliations. The result of this is that the mayor, if motivated by political ambitions or controlled by party bosses, is strongly tempted to appoint men who will give as much thought, if not more, to ways and means of breaking down the merit system from the inside as to ways and means of carrying out its provisions not only in letter but in spirit."⁸ The same unfortunate situation still exists in too many cities. The result is short tenure in the office of civil service commissioner, and a change in the personnel of the commissions following a change in the city administration. Overlapping terms for commissioners are now provided in several cities; this guarantees some continuity of policies and prevents an incoming administration from removing the commissioners and appointing partisans.

Various proposals have been made for removing commissions from political control. In a committee report of the Governmental Research Conference made in 1922, it was proposed to have the civil service commissioner selected by a board of special examiners. This board would be made up of the local superintendent of schools, the probate judge, and a third person selected by these two. This third person must be either a chief examiner of a civil service commission or an experienced industrial personnel manager. Two associate commissioners were to be selected, one by the chief executive of the city from the administrative staff, and one by the employees in the classified service. While the associate members were to have equal authority with the commissioner in exercising legislative and judicial functions, they would have advisory functions only when carrying out administrative functions.⁹ A similar plan was proposed in a committee report of the National Municipal League which was

⁸ E. O. Griffenhagen, "The Merit System in Chicago and Cook County," 18 *Nat. Mun. Rev.* 690 (Nov., 1929).

⁹ Governmental Research Conference, *The Character and Functioning of Civil Service Commissions in the United States*.

made in 1923. Again there was to be a single commissioner. Under this plan, the examining board was to be composed of three members, one appointed by the mayor, one by the local superintendent of schools, and the third selected by these two. Under this plan greater power was placed in the chief executive of the city. He was given power to select the commissioner from the three highest on the list. The chief executive might remove the commissioner at pleasure during a six months' probationary period. After that time the commissioner could be removed only for cause, and after written notice and public hearing.¹⁰ In Cincinnati one member of the Civil Service Commission is selected by the Board of Education, one by the Trustees of the University of Cincinnati, and one by the mayor. Two of the members of the personnel commission in Louisville are appointed by the Board of Education, and two by the Trustees of the University of Louisville; the mayor is an ex officio member.

The relative merits of a single personnel officer and of a commission have received much attention in recent years. The move for a single commissioner was given new impetus with the report of the President's Committee on Administrative Management favoring such a plan for the national government. The Model City Charter of the National Municipal League likewise recommends a single personnel director. A personnel board is also provided to serve in an advisory capacity to the personnel director, to hear appeals where employees are suspended or removed, and on recommendation of the personnel director to make rules. The principle of a single-headed personnel department is used in a few cities, being found most frequently in council-manager cities. Advocates of the single director or head take the view that personnel administration is only one phase of public administration, and that it should be placed in the hands of one person answerable to the city-manager or the executive. Placing responsibility and power in a single person will, it is held, result in more effective personnel administration. Those opposed to the principle of a single administrator say that he will not be able to withstand political pressure and that it will open the door to political favoritism. Again they believe that a personnel agency should exer-

¹⁰ "The Report of the Special Committee on Civil Service," 12 *Nat. Mun. Rev.* 442 (Aug., 1923).

cise some rule-making authority and that this can best be done by a commission. The plan provided in the Model City Charter would meet this situation and would appear to be the most desirable method of meeting the problem.¹¹

Even though a civil service system is established and the principle of the merit system adopted, not all positions are made subject to the plan. The determination of which positions shall be on the "classified" list and filled on the basis of competitive examination is usually made by state law, charter provision, or by ordinance. Positions in the civil service are usually grouped into the following four classes: (1) an exempt class, (2) a non-competitive class, (3) a competitive class, and (4) a labor class.¹²

One of the problems which arises when the question of determining the positions which shall be exempt from the formal merit system is being considered is the classification of department heads. Department heads are usually exempt from the merit system on the theory that the executive should be given freedom of choice in selecting them, since he must rely upon them for advice, and since the success of his administration will depend so largely upon the manner in which they carry out their duties. In some cities they are appointed by the mayor, manager, or council; in others, at least some of them are elected. The tendency—and it is a desirable one—is to remove administrative department heads from the list of elective officers. While election is the proper method of selecting policy-determining officers, appointment is a better means of obtaining skill and technical competence.

Where election is used to fill administrative posts, it has been found that in many cases persons with the greatest skill and competence are not interested. They are unwilling to undergo the ordeal of a political campaign, knowing that technical competence may not be the best vote-getting quality. As a committee of the League of Wisconsin Municipalities says, "A person fitted by training and experience for an administrative position may have no vote-getting ability. It is difficult to make a profession out of a position where the

¹¹ L. D. White, who has had experience on both the Chicago Civil Service Commission and the United States Civil Service Commission, favors the single administrator for the federal service. See L. D. White, *Introduction to the Study of Public Administration* (1939), p. 294.

¹² A. W. Procter, *Principles of Public Personnel Administration*, p. 32.

selection is based upon popular appeal rather than professional standards."¹³ The elected administrator must devote part of his energies to being reelected, and his administrative acts must be judged with some consideration of their effect upon his reelection.

Appointment of administrative officials has the further merit of shortening the ballot. Election of fewer officers—those who determine policies—enables the voter to use the ballot more effectively. If the voter is asked to fill a number of offices so great that he cannot know the individuals who are candidates, or if the offices are of such a type that he cannot be familiar with the duties, electoral indifference is likely to be the result. As stated by the report of the committee of the Wisconsin Municipal League previously referred to, "One of the best ways of hiding a public servant is to mix him up with many others so that none of them are important enough to attract the attention of the average citizen."¹⁴

If department heads are selected by some method other than election, the question arises as to the proper method of selection and tenure. Is it impracticable to fill such positions by a formal merit system? Are there desirable personal traits and necessary qualifications for department heads which cannot be tested by a merit system? Examining techniques and the methods of administering a merit system have so improved that the arguments formerly advanced to support the view that department heads should be in the unclassified service need to be reconsidered. A chief executive should have as much faith in an employee selected under a formal merit system as in one appointed by him for political reasons. Civil service employees have proved loyal to chief executives when they deserved it. These employees do not show their loyalty, as do political employees, by going out and working in political campaigns, but this is an argument in favor of making them subject to the merit system. Advocates of the merit system have urged its expansion "upward, outward, and downward." The principle might well be carried out so as to include department heads in a formal merit system.

Positions in the non-competitive class are filled after a qualifying examination. In the case of such positions, it is felt that it is impracticable to use an open competitive examination. The non-

¹³ 27 *Nat. Mun. Rev.* 536 (Nov., 1938).

¹⁴ *Ibid.*

competitive examination is used where the position requires highly specialized professional or executive qualifications. It is felt that no adequate formal test can be devised to determine the fitness of candidates for the position and that the selection must be made largely on the basis of experience and personality.

Non-assembled examinations are also often used for selecting employees when professional or executive qualifications are required. While such examinations are competitive, the candidates do not assemble in a group but are given an individual examination. Often a special examining board composed of specialists in the particular field is set up to make the selection.¹⁵

The examinations given are generally designed to test the actual knowledge and ability of the applicant for the specific position sought. Other factors than the examination are often considered, such as experience, education, personality, and physical condition. The weight given the various factors depends upon the position for which the candidate is an applicant. Personality, for example, is or should be given more weight in selecting higher office executives than in selecting clerks. Experience is given more weight in selecting engineers than lower grades of clerks. It should be noted, however, that commissions vary greatly on the relative weight assigned these various factors in selecting persons for the same type of employment.¹⁶

The tests given in civil service examinations have been criticized as being arbitrary and as having no relation to the position sought. The Subcommittee on Crime of the New York Crime Commission, in discussing tests given to police, said: "Tests of penmanship, spelling, arithmetical fundamentals, knowledge of geography, and the like go but a very little way in the selection of police personnel. It is of small moment that the applicant can locate the Tropic of Capricorn, or compute the number of rolls of wallpaper required to cover a room of given dimensions. The police administrator is seeking neither navigators nor interior decorators."¹⁷ While this criticism

¹⁵ See C. R. Woodruff, "A Non-Assembled Civil Service Examination," 11 *Nat. Mun. Rev.* 181 (July, 1922); C. L. King, "The Appointment and Selection of Government Experts," 3 *ibid.* 304 (Apr., 1914).

¹⁶ A. W. Procter, *op. cit.*, pp. 115-121.

¹⁷ 16 *Nat. Mun. Rev.* 720 (Nov., 1927).

formerly had some validity, it is no longer true of most civil service examinations. For most positions, the test used is the candidate's knowledge about the work he will be required to do in the position. A study of the duties of the position is used by the commission in devising the examination. Cooperation with the department head will help the commission in formulating a satisfactory examination.

Testing a knowledge of the work to be done in the position for which the examination is taken has obvious weaknesses. It selects a card-filer, typist, or clerk on the theory that he will always perform this type of work. Rather, the selection should be made on the basis of general ability so that people will be secured who will develop and be able to step into more responsible positions when vacancies occur. Securing a man of ability and general intelligence for the position of clerk would seem to be more important than securing an able clerk who has mediocre general ability and intelligence. "In many lines of employment," states A. W. Procter, "the actual knowledge with which a worker enters upon the duties of a given position is of less importance than his ability to respond to new situations, to take hold of new duties readily; in short, his ability to learn. The ability to learn may be taken as a fair definition of intelligence."¹⁸ Attempts to test general ability and intelligence are now being made in several cities. Psychological tests are being utilized in some cities for this purpose.¹⁹

No generalization can be made as to the type of examination that should be given. Some positions call for special aptitude; here an attempt to test general intelligence would be unwise. This would apply to such positions as painting, masonry, or steamfitting. Other positions call for employees with originality and initiative, and the examination should be devised to test general intelligence. Personality may be an important factor in some positions and negligible in others.

A physical test is usually given applicants for positions in the public service. Although in most positions this is merely a qualifying test and is not given any weight in determining the relative standing of candidates, in the case of some employees whose work requires a high degree of physical ability, such as firemen and

¹⁸ A. W. Procter, *op. cit.*, pp. 129-130.

¹⁹ See L. D. White, *op. cit.*, pp. 320-322.

policemen, it does constitute part of the examination and enters into the final grade. A physical examination is often the only one that is given for some employees such as laborers. Those who are able to pass such an examination are usually appointed to vacancies in the order of their applications.

After the examination has been given, the candidates are listed by the commission in the order of merit. The usual procedure followed in case of a vacancy is for the department head to notify the commission, which then submits the names of the one, two, or three highest on the list. If more than one name is submitted, this is done to enable the head of the department to consider the personal qualifications of the candidates. Even though the candidate may be well qualified from the point of view of technical training and ability, his value will depend in part upon personal qualities—whether he can fit into the departmental organization.

There is generally a probationary period of ninety days or six months for appointments under the merit system. During this period the employee is on trial, and the department head is generally given freedom of removal. If the appointee is kept beyond the probationary period his tenure becomes indefinite, and he is protected against arbitrary removal.

One of the methods used to defeat the principle of the merit system is provisional, temporary, and emergency appointments. Civil service laws usually provide that "to prevent the stoppage of public business or to meet extraordinary exigencies," in the absence of an eligible list appointments may be made without competitive examination. By failing to provide an eligible list the door to appointment on a political basis is opened. While laws usually provide that such appointments must not last longer than four months, violations are frequent. In 1927 it was found that over 2200 temporary or emergency employees were serving in New York beyond the four-month period for which they were authorized by law; some of them had served five or six years.²⁰ In 1928, 42½ per cent of the total salary expenditures of the West Chicago Parks system were paid to temporary appointees. In the same year 40 per cent of the 1900 positions subject to the Cook County, Illinois (Chicago), civil

²⁰ H. W. Marsh, "Exposures and Explanations in New York City Civil Service," 16 *Nat. Mun. Rev.* 378 (June, 1937).

service act were filled by temporary appointees.²¹ In its report in 1923, the Committee on Civil Service of the National Municipal League stated that provisional appointments ranged from 18 to 72 per cent of the total appointments made in the six cities studied. One remedy for this situation would be to prohibit fiscal officers, under penalty, from paying salaries to any temporary appointee for more than ninety days in any fiscal year. This is the plan followed in San Francisco.

Some critics of the merit system say that although it is sound in principle, in actual practice it has shown serious weaknesses. They say that in actual practice it provides a negative rather than a positive approach to the selection of qualified personnel in that it has prevented political appointments but has not provided a means of selecting the persons best fitted for public work. More is needed than merely keeping the clearly incompetent from being appointed; good personnel administration requires the appointment of the best qualified. This criticism is based, in part at least, on the method of examining and rating candidates, especially the assembled examinations which are given for minor positions. Commissions have recognized the validity of this criticism, have sought to remedy the situation, and in most cases have done so. Finally, criticism has been advanced by those who are against the merit system in principle because they will be more successful under a plan of political appointment. They advance excuses rather than reasons to justify their opposition to the system.

Another criticism which has been made of the merit system is that civil service commissions have been too passive in their recruitment policies. They have taken a negative approach, being content to weed out the unfit who apply. Although commissions in the past failed to develop an aggressive recruiting policy, the tendency in recent years has been to develop a positive program to attract men and women to the public service. The recruitment program of cities should be strengthened, and this can be done by the use of the radio, printed advertisements, and notices sent to schools and civic organizations.²²

²¹ E. D. Griffenhagen, *op. cit.* Also see Frances L. Reinhold, *The Provisional Appointment in City Civil Service Systems* (1937).

²² *Recruiting Applicants for the Public Service* (1942); E. D. Woolpert,

If personnel administration in cities is to reach the level which is desirable, a government career service should be developed.²³ As stated by Luther Gulick, the development of a career service will mean that "public employment will become a life work, an honorable occupation which one normally takes up in youth with expectation of advancement, and pursues until retirement."²⁴ Several handicaps have thus far prevented the development of a career service. One of these is the local residence requirement of many cities for appointment to positions in the public service. With opportunities for advancement limited to the city in which they begin, young men and women have hesitated to enter local government service. The trend is to abandon these residence requirements; nationwide examinations have been held in recent years for important positions in Detroit; New York City; Portland, Oregon; Mobile, Alabama; San Diego, Los Angeles, and Pasadena, California; Bangor, Maine; Durham, North Carolina; and Evanston, Illinois. If a government career service is to be developed, provision should be made by which a young man or woman can advance in the service of another government. Provision should also be made for transfer, from one type of work in the city to another, should special aptitudes or interests warrant.²⁵

One step in developing a career service would be to place minimum age requirements at a point to attract young people at the time they leave college, and to have maximum age limits that would bar others. This would end the practice of people entering private employment and then turning to public service if they fail in the private field. The public service should not be a refuge for those who fail in private employment; it should be limited to those who by choice select it as a life career.²⁶

"Personnel Practices and Public Relations," 21 *Pub. Management* 336 (Nov., 1939).

²³ *A Career Service in Local Government*, report of a committee of the International City Managers' Association (1937).

²⁴ Luther Gulick, "Difficulties in Developing State and Local Career Services," *Proceedings of the Twenty-Seventh Annual Meeting of the Civil Service Assembly of the United States and Canada* (1935), p. 119.

²⁵ Harvey Walker, "Cities Face Change in Personnel Practices," 17 *Pub. Management* 45 (Feb., 1935).

²⁶ Harvey Walker, "The Compensation of Public Employees," 16 *Pub. Management* 99 (Apr., 1934).

IN-SERVICE TRAINING FOR MUNICIPAL EMPLOYEES

Advocates of the merit system have in the past emphasized the need of selecting qualified personnel. There has in recent years been increasing recognition of the need of going further and providing in-service training for government employees. Though the selective process may be such that only persons of ability are admitted to the public service, there are problems of orientation—learning the techniques of a particular position and the procedures of the organization—which can be met by a well-devised training program. As stated by the director of the Bureau of Training of the New York Civil Service Commission, “a well-rounded personnel program should therefore supplement the selection process with appropriate in-service training activities.”²⁷ This is especially desirable if the practice of testing for general ability rather than for specific techniques is followed. The need of such training is also more apparent where entry into the service is restricted to the lower-grade positions. In-service training then becomes of value in preparing employees for promotion to higher-grade positions.

The principle of in-service training has been followed and found useful in private employment. Each year industry selects promising young men and women who are graduating from college. Even though these persons are selected on the basis of merit, they are put through a training course to learn the specific duties of the position they are to fill. Cities are now adopting this practice and finding it advantageous. Training schools for members of the police and fire departments have been established in several cities. The New York Police Department in 1917 established a police school that gave a two months' course of instruction in the duties of policemen. Other cities have established schools since that time. Among the subjects taught are rules of evidence, laws and ordinances, criminal identification, first aid, report writing, and local geography. Training schools for firemen have also been established in several cities, in which from 15 to 30 days' instruction is given to recruits. Among the subjects taught are the use of fire-fighting appliances, fire prevention, and rescue work. It is impracticable for smaller cities to have such schools. Some attempts at state schools have been made

²⁷ John J. Furia and Harold A. Winsor, “In-Service Training in New York City,” 1 *Pub. Personnel Rev.* 23 (July, 1940).

by state municipal leagues and state associations of officers. Work of this nature has been done by municipal leagues in Minnesota, Kansas, Oklahoma, and California, and by the New York State Fire Chief's Association and the Oklahoma Firemen's Association.

Although in its earlier development, in-service training was usually limited to members of the police and fire departments, it has since been extended to other groups of employees. The movement has spread so that by 1941, Mosher and Kingsley could report that "training of employees has gained status as an appropriate and necessary function of administration."²⁸ A great majority of the larger cities now carry on some in-service training work.

The enactment by Congress in 1936 of the George-Deen Act has led to an increase in the formal training of municipal employees; in this case, however, the program is not administered by the city. This act made federal funds available to support training programs administered under the supervision of state boards of vocational education.²⁹ For the fiscal year ending June 30, 1940, over 62,000 public employees were enrolled in training courses sponsored by state boards, a part of the cost being met by the federal government under the George-Deen Act. Over 31,000 of the total enrollments were firemen; policemen accounted for 9000 more. Courses were offered for employees in several fields, such as finance, health and sanitation, public welfare, water and sewage plant operation, water supply and treatment, personnel administration, and parks and recreation. Many of the courses originally developed by state municipal leagues were taken over by vocational educational authorities under the George-Deen Act. The federal government has thus stimulated the training of municipal employees.

PROMOTIONS

One of the chief criticisms which has been made of the public service is that it is a "blind alley." Young men and women are will-

²⁸ W. E. Mosher and J. D. Kingsley, *op. cit.*, p. 271. Also see *Employee Training in the Public Service*, report by the Committee of the Civil Service Assembly of the United States and Canada (1941).

²⁹ American Municipal Association, *Defense Training for Public Employees: The Status of In-Service Training Programs* (1940); Elton D. Woolpert, "Training of Local Government Employees," *Municipal Year Book*, 1941, pp. 116-122.

ing to accept positions in private employment which carry a small salary in the belief that they will be promoted on the basis of merit and soon climb to positions of greater responsibility. Before the adoption of the merit system in cities, it was clear that the higher positions were secured because of greater party prestige, the ability to carry more votes for the party and to be more effective in winning elections. While it is generally felt that where the merit system has been adopted, partisan politics is not an important consideration in promotion, it is believed that the problem of satisfactory methods for advancement on the basis of merit has not been solved.³⁰ In some cases the employee believes that personal influence—"drag" or "pull"—is more important than merit in securing promotions and salary increases. And in other cases, he considers the attempt to promote on the basis of merit to be honest and sincere but inaccurate. This general distrust of the methods of promotion in the public service is serious from the point of view of employee morale; and insofar as the distrust is justified, the result is serious because the really superior employees are not moving into the positions of responsibility.

An unsatisfactory system of promotion in the public service has several bad effects. It tends to discourage able men and women from entering the government service. Until promotion, as well as original appointment, is placed on the basis of merit, men and women of ability cannot be encouraged to enter the public service as a career. Those of the greatest ability who do enter will often become discouraged and leave the service to accept private employment. Those of mediocre ability and little ambition, however, will be content to remain. The morale of the public employees depends in large part upon a fair system of advancement and promotion. Promotion on the basis of merit is as essential as original selection on this basis. As stated by William C. Beyer, "If the merit system is to operate within the service as well as at its portals, account must be taken of the efficiency of an employee's work."³¹ This principle

³⁰ On promotions in the public service, see W. E. Mosher and J. D. Kingsley, *op. cit.*, chap. xxii; L. D. White, *op. cit.*, chap. xxiv; John M. Pfiffner, *Public Administration* (1946), chap. xix; T. C. Murray, "Promotions in the Public Service," 113 *Annals of the American Academy of Political and Social Science* 352 (May, 1924).

³¹ W. C. Beyer and others, *Problems of the American Public Service*, p. 126.

cannot be disputed; the problem is how this efficiency is to be fairly and accurately determined so that public servants will move up the promotion ladder on the basis of merit.

Length of service—seniority—is often an important factor in determining promotion in the public service. One argument advanced in favor of promotion on the basis of seniority is that older employees may lose their skill at passing examinations when, in fact, their usefulness may be greater than that of the young employee who is good at writing on promotional examinations. It is also said that seniority tends to avoid departmental discord and jealousies, and that political interference is eliminated.³² While it is generally felt that seniority may be some indication of increased ability and usefulness, too much weight should not be given to this factor. Some incentive should be given the government employee by providing for promotion on some basis other than time served. Provision must be made for the exceptional employee who deserves to be advanced more rapidly, and should be so advanced for the good of the service.

Efficiency ratings are used as a basis of promotion and advancement in some cities. Those using the merit system usually provide that such records shall be kept and used as a basis for promotion and advancement. While the methods of determining the efficiency of the individual employees vary, they usually seek to determine the comparative quantity and quality of the work performed by the various employees. Certain negative factors are also generally considered, such as unexcused lateness and absence or misconduct. A satisfactory system of efficiency ratings is one means of securing promotion and advancement on the basis of merit. Where properly administered, these ratings have the added value of improving the morale of the public employee, since he feels that good work and honest service will be recognized and rewarded.³³ A formalized method of determining an employee's service rating is more satisfactory than relying on the general judgment and opinion of a supervisor or administrator. The Probst Rating Scale, devised and developed by J. B. Probst, chief examiner of the St. Paul Civil

³² "Seniority as a Factor in Promotions," 27 *Pub. Management* 45 (Feb., 1945).

³³ A. W. Procter, *op. cit.*, chap. ix.

Service Bureau, is one of the best-known and most widely used systems for determining the service value of employees.³⁴

Promotion is sometimes based on an examination. Where a vacancy exists, an examination is held and only those who are in specified lower positions may compete. As in the case of original appointment, usually the three highest are certified, and one is selected by the department head. The increasing tendency to fill higher posts by promotion within the service is generally approved by students of personnel administration. The morale and spirit of government employees can soon be broken by going outside the service when vacancies occur in higher posts. Such a practice in the past has led to the statement that the government service is a "blind alley." Something more than the mere principle of promotion from within the service to fill such posts is needed. The employee must feel that promotion within the service is on the basis of merit, that it is a recognition and reward for good work.

POSITION CLASSIFICATION

In a governmental jurisdiction having many employees it is difficult or impossible for the administrative head, or the council, to keep in mind the facts about each individual position. The administrative head finds it difficult to know which positions are sufficiently alike to be treated similarly in pay schedules and other personnel problems. Good public policy dictates that like action be taken where the conditions are similar. The problem is who shall determine that the conditions are similar or dissimilar in public personnel administration. There is need of a classification of positions and a definition of each class so that the administrative head, the council, and the public may know the duties and responsibilities of each class. Position classification is an important tool of management, not only in working out equitable pay schedules but also in recruiting and selecting personnel. It is the best means of insuring that stenographers doing a certain class of work will receive the same pay

³⁴ J. B. Probst, *Service Ratings* (1931); J. B. Probst, "Substituting Precision for Guesswork in Personnel Efficiency Records," 20 *Nat. Mun. Rev.* 143 (Mar., 1931); L. Blog and F. Telford, "Does the Probst System Rate?" 20 *ibid.* 581, 583 (Oct., 1931); *Proceedings of the Twenty-Seventh Annual Meeting of the Civil Service Assembly of the United States and Canada* (1935), pp. 128-141.

whether they are in the health, police, or fire department. It is a means of relating the pay received to the duties and responsibilities of the employee. A classification of positions and a written description or specification of the knowledge, skill, experience, and training required for entry into each class of position is of value to interested applicants, and also to the civil service commission in devising tests and carrying out its work of recruitment and selection.³⁵

Position classification involves two fundamental steps. The first is to find out, by a study of the work being done, the different kinds or classes of positions. The next is to determine which positions now established fall in each class. Each class thus consists of all positions which are sufficiently alike in duties and responsibilities to require substantially the same qualifications and to warrant receiving the same pay.³⁶

Standardization of public employment is of value in other ways. Classifying positions so that those having similar duties and qualifications are grouped together "provides a basis for devising effective entrance and promotion examinations, for the conduct of training courses, for indicating principal lines of promotion, for the setting of suitable standards of efficiency, and for the regulation of advancement and promotion. In short, a standardization, though designed primarily to adjust the problem of compensation, provides the basis that is needed for handling most of the practical details of public employment administration."³⁷

COMPENSATION

Fixing the salary or wage scale for all the positions in the municipal service is obviously a difficult task.³⁸ A criticism which has frequently been made of the municipal service is that salaries are not

³⁵ Ismar Baruch, "Basic Aspects of Position-Classification," 1 *Pub. Personnel Rev.* 1 (Oct., 1940); W. C. Beyer, "Employment Standardization in the Public Service," 19 *Nat. Mun. Rev. Supp.* 391 (June, 1920).

³⁶ *Position-Classification in the Public Service*, Committee Report, Civil Service Assembly of the United States and Canada (1941), p. 3. Also see D. C. Stone, "What Is a Classification of Positions?" 20 *Pub. Management* 70 (Mar., 1938); L. D. White, *op. cit.*, chap. xxi.

³⁷ A. W. Procter, *op. cit.*, p. 43.

³⁸ Fred Telford, "Evaluating the Worth of Work," 15 *Pub. Management* 131 (May, 1933).

sufficiently standardized. Equal pay for equal work should be the rule in public service, regardless of the department in which the work is done. Studies which have been made reveal great inequalities and many cases of injustice in municipal pay schedules.

The principles which should determine the salary paid public employees can generally be agreed upon; it is their application that is difficult. Students of personnel administration are generally agreed that the pay schedule for a position should be based on the difficulty and responsibility of the work, and that the same pay should be given throughout a jurisdiction for equal work performed.³⁹ Variations within a pay scale applicable to a given position should depend upon the relative efficiency of the employee. Among the factors to be considered in fixing municipal salaries are the training and experience required, the difficulty, unpleasantness, or dangers involved in the particular work, the degree of security or insecurity of the position, the possibility of promotion, and possibly the prestige value of public employment in general and of that position in particular. All the principles stated above seem fair and are generally accepted. It is in applying them that difficulties arise.

The object in fixing salaries in the public service is to be fair to both the employee and the taxpayer. If similar work is done in private employment, as in the case of typists, this offers some help in fixing salaries of municipal employees. Generally, however, salaries in the city service cannot be determined competitively because for many types of work there are no comparable positions in the private field. And as yet there is no competition between cities since the residence requirement is followed, either by law or by custom. To a limited degree, competition does determine salaries in the public service. As pointed out by Harvey Walker, cities and private employers compete for raw human material inasmuch as the qualities needed for good policemen or firemen are also needed for certain types of private employment. To this extent, competition does fix the basic rate or entrance salary for public employment. Salary increases in the public service are less competitive, but there is the possibility that if they are too low the employee may resign to enter private employment.⁴⁰ Lent D. Upson has suggested that the

³⁹ Ismar Baruch, "Surveying Prevailing Salary Rates," 3 *Pub. Personnel Rev.* 86 (Apr., 1942).

⁴⁰ Harvey Walker, "The Compensation of Public Employees."

compensation of public employees be fixed in accordance with the usual salary paid the social group with which the particular type of employee is identified. He points out that individuals fall into rather well-defined social groups and that the various types of public employees come from these groups. Under this proposal we would pay the teacher, the policeman, and the other employees salaries comparable to those received in private industry by the persons in the social group or class with which they associate and with which they are identified.⁴¹

Criticism can be made of the salary levels in most cities.⁴² The more responsible positions carry a lower salary than do comparable positions in private industry. Persons in the lower salary groups in the city service generally receive more than is paid for comparable work in the private field. One explanation which has been offered is that city councils have found it good politics to pay high salaries in the lower brackets since the number of employees and resulting votes is great. The number of employees receiving high salaries is less so that their attitude will not be so important at election time. Finally, the voters generally react more favorably to liberality in the salaries paid in the lower-paid positions than in the case of those in the higher brackets. The practice may not be conducive to good public administration—it is generally considered not to be—but it is good politics. Unfortunately the test for the council member in fixing a salary schedule is likely to be the result it will have at the polls.

Provision must be made in the public service for revision of salary schedules to meet new conditions arising out of employment or economic conditions. Salaries and wages in the public service do not respond as readily to changed economic conditions as they do in private employment. During a period of rapidly increasing prices, as in World Wars I and II, wages of public employees lagged behind the increased cost of living to a greater extent than did those of private employees. And in periods of depression when the cost of living is substantially reduced, wages of public employees are usually the last to be reduced. This lack of flexibility of public wage

⁴¹ L. D. Upson, "How to Determine an Equitable Pay Basis for Public Employees," 16 *Pub. Management* 78 (Mar., 1934).

⁴² See C. L. Richey, "Determining Pay Policy," 3 *Pub. Personnel Rev.* 20 (Jan., 1942); Joseph Pois, "Preparation and Installation of Salary Plans," 20 *Pub. Management* 99 (Apr., 1938).

scales is the result in part of the fact that they are determined by publicly elected officials who fear the result at the polls of a general wage change. Part of it is the result of the inflexibility of municipal revenues—the lag between the time of tax levy and tax collection. An adjustable salary scale plan was adopted in St. Paul in 1922, by which salaries are adjusted up or down in accordance with increases or decreases in the price scale indices shown in the annual reports of the United States Bureau of Labor Statistics. When the city budget is prepared, the city comptroller writes into it salary adjustments on the basis of the current cost-of-living index for St. Paul. The council is notified of the changes, but no formal action or approval is necessary. Unless living costs vary at least 2 per cent from the previous year, no salary adjustments are made. As the cost of living goes up, wages are increased; and when the cost of living falls, wages are reduced. The aim is to secure an adjustment between the level of the cost of living and the salaries received by public employees that is at least as satisfactory as in private employment. The merits of the adjustable salary scale have been summarized as follows:

It has assured the city employee a fair wage, regardless of the rise and fall of the cost of living. The employee has accepted reductions in his salary cheerfully, realizing that, when prices go up, his salary will do likewise. It has made department heads free from the constant pressure and demands for increases from employees, giving him more time for other duties and making fewer political enemies. The taxpayer has been given a fair deal too, as he is assured that expenditures for salaries and wages will be kept down in depression periods. All in all, the adjustable wage scale and salary standardization scheme insures a definite, equitable, and uniform plan for increasing and decreasing city salaries and wages in place of the haphazard method in effect heretofore.⁴³

Other cities which have used or are now using a cost-of-living adjustment plan for salaries and wages are Milwaukee, Wisconsin;

⁴³ S. E. Turner, "St. Paul's Adjustable Salary Scale for City Employees," 27 *Nat. Mun. Rev.* 583 (Dec., 1938). Also see J. B. Probst, "The St. Paul Plan of Adjusting Salaries to Cost of Living," 15 *Pub. Management* 163 (June, 1933); "Salary Increases for Municipal Employees," 23 *ibid.* 323 (Nov., 1941); J. M. Leonard and Rosina Mohaupt, *Cost-of-Living Plans for Municipal Employees* (Detroit, 1942); J. J. Donovan, "Pay Adjustments for City Employees," 24 *Pub. Management* 8 (Jan., 1942).

San Diego, California; Columbus, Ohio; and Niagara Falls, New York.⁴⁴

DISMISSALS

Where the merit system has not been adopted, the tenure of administrative employees is insecure. A change in the political complexion of the city government means a change in most if not all of the administrative employees. Deserving party workers will be clamoring for positions in the public service. Employees who have given faithful service and who are experienced in the duties of their office will be discharged. To the victor belong the spoils will be applied without regard to the effect upon the proper performance of municipal functions. Obviously, such a system is not conducive to efficient and economical administration. Capable persons are not interested in entering the public service, knowing that their continuance will depend not upon their ability but upon the success of the political party at an election. Under such a situation the incentive for good service on the part of the employee is lacking.

The merit system seeks not only to select employees on the basis of merit but to continue them in the service as long as their work is satisfactory.⁴⁵ Tenure is to be made dependent upon service to the municipality—the efficient performance of the duties of office—rather than upon service to the party. The problem of giving a public employee the proper degree of security of tenure is difficult. While security of tenure is desirable when it means protection against removal for political reasons, tenure may become too secure. The difficulty is in achieving a proper balance between security of tenure and removal where the conditions warrant. Protection must be provided against the employee's arbitrary or political discharge, but care must be taken so that barriers are not erected which prevent the removal of deadwood from the public payrolls. Tenure

⁴⁴ 23 *Pub. Management* 327 (Nov., 1941). O. B. Blix and Norman N. Gill, "Milwaukee Local Governments Join in Salary Adjustment Plan," 32 *Nat. Mun. Rev.* 482 (Oct., 1943).

⁴⁵ For methods of discipline for public employees, other than removal from the service, such as reprimand, demerit marks, loss of seniority rights, imposition of fines, suspension without pay, and demotion see L. D. White, *op. cit.*, chap. xxv.

based upon legal provisions presents serious problems. Security of tenure is desirable, but it should not mean, as some critics have charged, that you cannot get rid of a merit system employee unless he commits murder.

Employees under the merit system are given a probationary appointment, usually six months or less, during which period they may be removed with little or no formality. In some cases the employee must be given a full statement in writing of the reasons his work is not satisfactory to the appointing officer, and this notice terminates his service. After the probationary period they are placed on indefinite tenure, various methods being provided to protect them against arbitrary removals without sufficient cause. In some cities the department head may remove an employee who holds his position under the merit system by filing written charges with a designated officer and giving the employee an opportunity to file a reply. Other cities provide for an appeal by the employee to the civil service commission. And in still other cases the power of removal is placed in the civil service commission.

Students of public personnel administration are not in agreement as to the best method of handling the problem of removals.⁴⁶ Removal by the civil service commission is advocated on the grounds that only in this way can employees be protected against removal for personal or other reasons than their ability to perform efficiently the duties of their office. Those who favor removal by the department head believe that the latter is more competent to judge whether the employee's service is satisfactory. Since the department head will be judged by the results achieved, he will desire to keep persons whose service is satisfactory and to remove only those where there is a sufficient cause. If he does not have the power to suspend or remove subordinates—subject, however, to adequate safeguards—the enforcement of discipline and maintenance of high standards of efficiency is a difficult problem. Experience demonstrates that where this power is given, department heads do not exercise it arbitrarily and without cause. There is little incentive for a department head to remove an employee for political reasons because his successor

⁴⁶ Cf. "Political Meddling with Police and Fire Services," 16 *Nat. Mun. Rev.* 151 (Mar., 1927); C. P. Messick, "Should Civil Service Commissions Participate in Dismissals?" 16 *ibid.* 419 (June, 1927).

will be selected according to merit and not on the basis of political affiliations. Where a department head must go to a civil service commission to secure the removal of an employee he will often retain him, despite his inefficiency, in order to avoid the humiliation of defending his request at a public hearing; for the employee, by retaining a clever attorney to present his case before the commission, is usually able to embarrass the department head. Such hearings frequently degenerate into a general washing of the dirty linen of the department. They often amount to a trial of the department head rather than of the employee; his methods of supervision, his instructions to employees, his attitude and conduct are described by the employee in an attempt to show that it was the fault of the supervisor, not his own. Protection to the employee should not be carried so far that it interferes with the power of the department head to secure efficient service from his employees.

PENSIONS FOR MUNICIPAL EMPLOYEES

The removal from the municipal service of persons whose efficiency has become impaired by old age presents a difficult problem. It is sometimes said that in such cases cities should do what most private employers do, discharge the employee when he can no longer "deliver the goods" and replace him by a younger employee. Regardless of the question as to whether this should be done in public employment for employees who have served for long periods, actual practice has demonstrated that it is not done as readily as in private employment.

The chief object in a pension or retirement system for governmental employees is the elimination from the service of those persons who have lost their efficiency because of old age.⁴⁷ Where

⁴⁷ See Paul Studenski, "Pensions in Public Employment," 11 *Nat. Mun. Rev.* 96 (Apr., 1922). This is a report of the Committee on Pensions of the National Municipal League, of which Mr. Studenski was secretary. For minority reports by Albert de Roode and Lawson Purdy, see 11 *ibid.* 145, 355 (May, Nov., 1922); Lewis Meriam, *Principles Governing the Retirement of Public Employees* (1918); Rowland A. Egger, *The Retirement of Public Employees in Virginia* (1934); Rowland A. Egger, "Why Retirement Systems for City Employees?" 17 *Pub. Management* 77 (Mar., 1935); Rowland A. Egger, "Sound Pension Practice for Cities," 17 *ibid.* 99 (Apr., 1935).

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no pension system is in effect, employees are often kept as long as they can fulfill the minimum attendance requirements. Department heads have shown an unwillingness to remove superannuated employees, despite their inefficiency. They have nothing to gain financially, as do employers in private business. The added cost of government caused by the inefficient superannuated employee will be borne by the taxpayers—and they will probably never know what is done. Again, the administrative head realizes that such action will be unpopular with other employees in the department; it will brand him as cold and heartless in dealing with subordinates.⁴⁸ The maintenance of superannuated employees on the payroll proves to be a costly and unsatisfactory method of meeting the problem of old age in the public service. While it is impossible to determine the cost of such a procedure, obviously it is great. Not only does the particular employee not earn his salary, but there is a detrimental effect upon other employees. Such a plan tends to slow up the process of promotion and, in doing so, to discourage men in the lower ranks and cause them to leave the service and accept other employment.

Pensions have been suggested as one means of attracting and holding a higher type of employee in the government service. This results from the greater opportunity to reach the higher positions because of the removal on pension of the superannuated employees. Pensions should also help to retain people who have been in the service for several years and, because of this experience, have become more valuable. They appreciate the value of the retirement benefit system to themselves and consider this when outside offers are made. The benefits accruing to them are often so designed as to provide a financial penalty in case of resignation. In such cases there is, of course, an added incentive for the employee to continue in the service. Using the pension system to penalize the employee who leaves seems unwise and is disapproved by most writers. "Imposing a penalty in event of resignation or dismissal might diminish the attractiveness of the public service instead of enhancing it," says Lewis Meriam. "The real problem of the government as an employer

⁴⁸ See *Report on Establishment of a Retirement System for the Employees of Baltimore City* (Oct., 1923); *Report of Commission on Pensions in New York State* (1920), Leg. Doc. No. 92.

is not in keeping a particular man tied to a particular job by providing that if he leaves it he will have to sacrifice certain of his provisions for old age, but in raising the general level of the public service as a profession." He would accomplish this by increasing the "opportunities for advancement by encouraging the free circulation of employees among different governments, national, state, and local, so that the man who is a success in a small position can look for normal advancement to the whole field of government service and not merely to that restricted area within the jurisdiction of the particular governmental unit for which he is working."⁴⁹ Leonard D. White has taken a similar position. "Some device needs to be worked out to open up the opportunity for greater mobility in the public service," he states, "rather than imposing a penalty on movement from one jurisdiction to another, or from public to private service."⁵⁰ Under most systems, if the employee resigns, the amount contributed to the pension fund by him is returned with interest, but the part that has been contributed by the government is lost.

Pensions were formerly advocated or defended on sentimental grounds. It was said that the man who had spent his life in the public service should, as a matter of gratitude on the part of the public, be retired on pension. It is generally accepted today that this position is no longer tenable. Pensions paid for sentimental reasons apply to all persons, not only to those who have spent their life in public service. The only defense for pensions is that they constitute good public personnel administration, that they constitute part of a satisfactory employment policy in the public service, and that the improved efficiency in the service will justify the cost. They should be looked upon, and in fact are often referred to, as deferred pay or adjusted compensation. They should be considered as something earned by the employees. A pension is merely a plan of payment which is devised to improve the staff, and consequently the efficiency with which public affairs are administered.

Two methods of providing funds for pensions are used, the contributory and the non-contributory systems. Under the non-contributory plan the government provides all the funds, while under the contributory plan the employee pays a part. The contributory

⁴⁹ Lewis Meriam, *op. cit.*, p. 360.

⁵⁰ L. D. White, *op. cit.* (1926 ed.), p. 361.

plan is generally advocated by writers on the subject and is the more widely used. Its chief merit is that it tends to make employees more reasonable in their demands, causing them to realize that pensions are a form of deferred payment and not a gift.⁵¹

In cities having a locally administered pension system, there is a board of trustees to administer the funds. Such boards are generally composed of representatives of both the city and the employees; but in some cases, as in New York City, employees have no representation. A combination of employer and employee representation is usually favored. Since the employees contribute part of the money, it is felt that they should have a voice in the determination of policies. It is also felt that representation on the board which administers the system will lead to greater interest in and support of the pension plan by the employees.

Too many pension plans have been poorly planned and not founded on an actuarial cost basis. An arbitrary and inadequate payment to the pension fund has been made without scientific calculation of the needs on an actuarial basis. It has been found necessary in several cases to increase the contributions to the fund, to meet the deficit by taxation, or to reduce the benefits. Such breakdowns have occurred in several cases and have tended to cause dissatisfaction and to bring pension systems into disrepute. A sound financial structure is essential to the successful operation of a pension system for public employees. To secure this, the pension system must be established and operated on an actuarial basis. Some of the smaller cities carry their old age retirement insurance for employees with private companies.

The number of employees in smaller cities is not sufficient to permit a locally administered pension system to be established on an actuarial basis.⁵² To meet this situation, state-administered pension plans for local government employees have been established in 19 states, and three other states have state systems covering employees of municipal fire departments only.⁵³ In 1945, 286 cities having a population of 10,000 or over were participating in state systems.

⁵¹ See 11 *Nat. Mun. Rev.* 96 (Apr., 1922). But see 11 *ibid.* 145 (May, 1922) for an opposite view.

⁵² Arthur S. Hansen, "Retirement Plans for Small Cities," 25 *Pub. Management* 37 (Feb., 1943).

⁵³ *Municipal Year Book*, 1946, pp. 130-131.

This was 26.6 per cent of the total cities in this population group. In New York, where membership in the state retirement system is optional with the local government, New York City is the only city not participating in the state system; and in Ohio, all the cities except Cincinnati participate in the state system.

The larger number of employees under a state-local pension system permits the application of sound principles of administration. Operation on a sound actuarial basis, security of pension funds, and lower administrative costs should result from participation by local governments in a state pension plan. Large cities can satisfactorily administer their own plan, and hence gain little from participation in a state system.

The growth in pension systems for municipal employees has been rapid. Pensions were first established for special groups of employees, especially policemen and firemen, but there has been a marked tendency to extend them to general city employees. By 1945, 85.4 per cent of all cities over 10,000 population had retirement systems for some or all of their employees. The number of cities having pension systems may be misleading because the groups of employees not covered may be large. Of the 904 cities over 10,000 population which had pension systems in 1945, only 469, or 51.8 per cent, covered all classes of employees.⁵⁴ As stated in a recent study of the Bureau of the Census, "Only a superficial view results in the mistaken belief that all the big cities have uniformly adopted pension systems."⁵⁵

LIABILITY OF A CITY FOR INJURY TO EMPLOYEES

The distinction between governmental and corporate functions, which was discussed in an earlier chapter on tort liability, also applies in determining the liability of cities for injuries received by employees in performing their duties. At common law, cities are not liable for injuries suffered by employees in the performance of governmental duties. If the employee is engaged in the performance of a corporate or proprietary function, an action may be brought

⁵⁴ *Ibid.*

⁵⁵ *Financing State and City Pensions*, State and Local Government Special Study No. 15, Bureau of the Census (1941).

against the city. In the latter case the city can use all the common-law defenses open to a private employer.

A private action by the injured employee against the employer, whether a government or private individual or corporation, is unsatisfactory. Workmen's compensation acts have been passed as a more just means of taking care of such cases. By express statutory provision in several states, and by judicial interpretation in others, cities have been included in workmen's compensation acts.⁵⁶ Such protection should be granted to the employees of cities in all our states.

The most satisfactory method of meeting this obligation is to provide, as part of the pension system discussed in the preceding section, for disability and death benefits as well as for retirement benefits. Pension systems in practically all cases provide disability and death benefits. When the employee is injured in the performance of his duties, he receives payments from the pension fund; and in case of death, payments are made to his dependents. The amount of the payments and the period for which they are made vary, depending upon the provisions in the particular system. As in the case of retirement, disability and death payments should be placed upon an actuarial basis.

EMPLOYEE ORGANIZATIONS IN THE MUNICIPAL SERVICE

Beginning about 1880, the labor union movement has gradually been extended to cover the public service.⁵⁷ Little progress was made until the present century, there being limited organization of municipal employees outside the recognized crafts. In 1916 the American Federation of Teachers was organized and affiliated with the American Federation of Labor. The International Association of Fire Fighters which was formed in 1918 is also affiliated with the A. F. of L. In the 1930's national unions of the industrial type ap-

⁵⁶ Joyce Cox, "Do Cities Come Within the Workmen's Compensation Act?" 5 *Texas Law Rev.* 300 (Apr., 1927); "Municipal Liability to Member of Volunteer Fire Department," 13 *Va. Law Rev.* 501 (Apr., 1927); T. A. Matthews, "The Workmen's Compensation Act as It Affects Municipalities," 11 *Ill. Mun. Rev.* 57 (Mar., 1932).

⁵⁷ See W. E. Mosher and J. D. Kingsley, *op. cit.*, chap. xxv; "Employee Organizations," in *Municipal Year Book*, 1946, pp. 131-134; Arnold S. Zander, "The American Federation of State, County and Municipal Employees," 19 *Pub. Management* 258 (Sept., 1937); Abram Flaxer, "State, County and Municipal Workers of America," 19 *ibid.* 262 (Sept., 1937).

peared in the local field. The American Federation of State, County, and Municipal Employees was chartered by the A. F. of L. in 1936. The following year the Congress of Industrial Organizations (C.I.O.) chartered the State, County, and Municipal Workers of America and entered the local field. Another organization formed in 1936, the National Civil Service Association, has similar objectives to those of the A. F. of L. and C.I.O. unions, but it is not affiliated with the general labor movement. Several of the larger cities have strong organizations which are not affiliated with the general labor movement. The existence of these organizations indicates a consciousness on the part of municipal employees that they have common interests and needs which can be met more satisfactorily by united action. This has been expressed in part through benevolent, protective, and professional associations, and also through organizations affiliated with the general labor movement.

The right of municipal employees to form organizations and to affiliate with labor unions has generally been recognized. President Franklin D. Roosevelt, who denied the right of government employees to strike, recognized their right to organize. He said: "Organization of governmental employees has a logical place in government affairs. The desire of government employees for fair and adequate pay, reasonable hours of work, safe and suitable working conditions, development of opportunity for advancement, facilities for fair and impartial consideration and review of grievances and other objectives of a proper employee-employer relation policy, is basically no different from that of employees in private industry. Organization on their part to present their views on such matters is both natural and logical."⁵⁸ This right may, however, be limited or taken away, and some cities have by rules or regulations forbade certain groups of their employees to join labor unions. These regulations have been attacked in the courts but have been upheld. The view has been taken that the city may hire or dismiss employees for any reasons it sees fit, and that there is no denial of any constitutional right in such a provision.⁵⁹

The organization of municipal employees has led to the question

⁵⁸ Quoted in Simon E. Sobeloff, "Labor Union Contracts and Cities," *Municipalities and the Law in Action* (1946), p. 427.

⁵⁹ For cases, see National Institute of Municipal Law Officers, *Power of Municipalities to Enter into Labor Union Contracts* (1941), pp. 17-18; *Labor Unions and Municipal Employee Law* (1946), pp. 21-33.

of whether they have available to them the means and methods used by employees in the field of private industry. May they make use of the strike to enforce their demands and to secure redress of their grievances. Those who oppose believe that "there are special relationships of public servants to the public itself and to the Government" and that while they may organize to present their views on pay, hours of work, and working conditions, the right to strike cannot be recognized. As stated by President Roosevelt in 1937, "Militant tactics have no place in the functions of any organization of Government employees. . . . Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of Government until their demands are satisfied. Such action, looking toward the paralysis of Government by those who have sworn to support it, is unthinkable and intolerable."⁶⁰ In 1941, Mayor LaGuardia of New York City said that "the City does not and cannot recognize the right of any group to strike against the City."⁶¹ Charles S. Rhyne, executive director of the National Institute of Municipal Law Officers, after pointing out the possible disaster which might result from a strike of public employees, has said: "The basic principle that there is no right to strike against the government is grounded upon a sound policy which demonstrates that labor's right of strike must give way to the paramount public interest and need for continuous functioning of all activities and services of government."⁶² Those who defend the right of public employees to strike take the position that the action is not against the government but only against the arbitrary acts of politicians and administrators who refuse to recognize the just complaints and grievances of employees. The usual channels open in the public service for the redress of grievances are not sufficient, they contend, and the right to strike is needed. Generally, however, they would make an exception for police and firemen,

⁶⁰ Letter of August 16, 1937, to convention of National Federation of Federal Employees. Quoted in report of the National Institute of Municipal Law Officers (1941), *op. cit.*

⁶¹ Letter of April 7, 1941, to the chairman of the Board of Transportation, New York City. Quoted in *ibid.*

⁶² Charles S. Rhyne, "Public Workers and the Right to Strike," 28 *Pub. Management* 325 (Nov., 1946).

recognizing the serious consequence to the community in case of strikes by these employees. Since substitutes cannot be secured nor provision made for carrying on this work in an emergency, many advocates of the right of public employees to strike would make an exception for these services.⁶³

Labor organizations have generally accepted the argument that the public employee is in a special position and that the strike should not be used. The constitution of the International Association of Fire Fighters states: "We shall not strike or take active part in any sympathetic strikes as our position is peculiar to most organized workers, as we are formed to protect the lives and property of communities in case of fire or other serious hazards."⁶⁴ The American Federation of State, County and Municipal Employees (A. F. of L.) has accepted the position that government employees should not strike, but the president of that organization, writing in 1941, said: "I am about at the point where I feel that we cannot be permanently in the position of sacrificing the best interests of our people to a policy of avoiding strikes almost regardless of cost."⁶⁵ The State, County and Municipal Workers of America (C.I.O.) at their biennial convention in 1941 voted to establish machinery for strikes in government departments to be used when all other methods of attaining collective bargaining objectives had failed. The former provision in the constitution that "it shall not be a policy of this organization to engage in strikes as a means of achieving its objectives" was retained, but it was "clarified" by the section authorizing the national executive board to establish rules and regulations governing strike procedure for local unions.⁶⁶

Regardless of whether municipal employees have the legal right to strike, or how serious the harm to the public may be, strikes in the public service have occurred—and may be expected to occur in the future. Among the important strikes of government employees were the Boston police strike of 1919, the strike of firemen in Salt Lake City in 1925, of street railway workers in Detroit in 1937, and of refuse workers in Newark in 1942. In 1944, there was a nine-

⁶³ Roger N. Baldwin, "Have Public Employees the Right to Strike?—Yes," 30 *Nat. Mun. Rev.* 515 (Sept., 1941).

⁶⁴ Quoted in W. E. Mosher and J. D. Kingsley, *op. cit.*, p. 582.

⁶⁵ Quoted in 23 *Pub. Management* 333 (Nov., 1941).

⁶⁶ *New York Times*, Sept. 27, 1941.

day strike of 2500 employees of the Los Angeles Department of Water and Power, and in the same year a seventeen-day strike in Philadelphia of 3000 employees of the city's water, street cleaning, and highway bureaus. There have been strikes of teachers in several cities in recent years. If, however, we consider the number of cities in the country, the number of employees and the degree to which they have been organized, the number of strikes which have occurred is small.⁶⁷ Most of the strikes in the public service have been of skilled and unskilled laborers. Although we may dislike the thought of a strike "against the government," we must give serious thought to conditions in the public service which will cause public employees to resort to this remedy. As stated by Mosher and Kingsley, "If strikes in the public service are contrary to public policy, then, clearly, unsatisfactory working conditions in the public services are against the public welfare."⁶⁸

Another question which arises is the power of municipalities to enter into labor union contracts. As Arthur W. Macmahon has pointed out, since employees are not recruited and held by a process of drafting, cities do in a sense bargain for their labor.⁶⁹ The degree to which they shall bargain with their employees after they have been selected is the core of the problem. If cities bargain with their employees on wages, hours, and working conditions, shall they recognize the union or the closed shop? The latter obviously goes much further and will be questioned on the grounds of both policy and law. The difficulty of applying the closed shop to merit system employees has been recognized by advocates of collective bargaining. As stated by one writer, the closed shop is "wholly incompatible with requirements that appointments be made by competitive examination and with the provisions for tenure and promotion under the merit system. Union membership in government agencies under civil service must obviously be entirely voluntary."⁷⁰

⁶⁷ David Ziskind, *One Thousand Strikes of Government Employees* (1940).

⁶⁸ W. E. Mosher and J. D. Kingsley, *op. cit.*, p. 584. On the problem of unionization in the public service, see also *Employee Relations in the Public Service*, a committee report published by the Civil Service Assembly of the United States and Canada (1942); John M. Pfiffner, *op. cit.*, pp. 322-327.

⁶⁹ Arthur W. Macmahon, "Collective Labor Action in City Government," 23 *Pub. Management* 328 (Nov., 1941).

⁷⁰ Roger N. Baldwin, *op. cit.*

Although the closed shop is incompatible with an open competitive merit system, the union-shop principle could be applied. Those who object to unionism in the public service point out, however, that even the union shop would add another requirement or qualification for public service—and they add that it is one which would have no bearing on the merit of the employee for public service.⁷¹

Some cities have entered into labor union contracts. In 1942, the American Federation of State, County and Municipal Employees (A. F. of L.) had contracts in 29 cities, and the State, County and Municipal Workers of America (C.I.O.) had contracts in 17 cities.⁷² Since that time other cities have entered into such contracts. A step in the direction of collective bargaining was taken in the State of Washington in 1935, a state law providing that any city of the first class "owning and operating a system of waterworks, light and power system, street railway or other public utility, shall have power and authority, through its proper officers and officials, to deal with and to enter into contracts for periods not exceeding one year, with its employees employed in the construction, maintenance and/or operation of such utilities, through the accredited representatives of such employees or of any labor organization representing and authorized to act for such employees, concerning wages, hours, and conditions of labor in such employment."⁷³ The city of Seattle under this legislation entered into a contract with "employees of the Transit System who are members of Local Division No. 587." The agreement did not, however, provide for the union shop but affected only those employees who voluntarily joined the union. In 1941, Clarksburg, West Virginia, entered into an agreement with a local of the State, County and Municipal Workers of America (C.I.O.) which goes further in the direction of the union shop; it provides that "the city recognizes the said Union as the sole collective bargaining agency for all employees of the city of Clarksburg" and states that "as a condition of employment, all eligible employees shall be members of the Union."⁷⁴

The question of collective bargaining in the public service raises

⁷¹ H. Eliot Kaplan, "Have Public Employees the Right to Strike?—No," 30 *Nat. Mun. Rev.* 518 (Sept., 1941).

⁷² 24 *Pub. Management* 277 (Sept., 1942).

⁷³ See National Institute of Municipal Law Officers (1941), *op. cit.*

⁷⁴ See 23 *Pub. Management* 332 (Nov., 1941).

the question of both public policy and legal power. A study made by the National Institute of Municipal Law Officers in 1941 took the position that cities do not have the power to sign collective bargaining agreements with labor unions representing municipal employees. Among the reasons advanced in support of this position were that it would be an unlawful and unauthorized delegation of public power to a private organization; that a closed-shop agreement would discriminate between citizens; that it would violate civil service requirements of the law; and that public employees have no right to strike to enforce such agreements.⁷⁵ In support of its position, the report cited judicial decisions, and the opinions of attorneys-general of seven states and of several city attorneys. Representatives of organized labor have denounced the report, attacking it on the grounds of both policy and law.⁷⁶ In its 1946 report, *Labor Unions and Municipal Employee Law*, the National Institute of Municipal Law Officers said: "The decisions directly passing upon contracts between labor unions and municipal governments on the subjects of employer-employee relations are few. None have been fully and directly reviewed by a court of last resort. They offer few blanket answers."⁷⁷ The problem of collective bargaining in public employment needs clarification; this will result from further judicial decisions.

The question has recently arisen, and must be decided in the future, as to whether means provided by the government for the settlement of labor disputes shall apply to employees of the government as well as to those of private employers. The National Labor Relations Act exempted government employees from its provisions. In 1942, the right of the National War Labor Board to take jurisdiction in disputes between cities and their employees was disputed by 79 member cities of the United States Conference of Mayors. These cities denied that such power had been given either by act of Con-

⁷⁵ National Institute of Municipal Law Officers, *op. cit.*

⁷⁶ *Legal Memorandum in Support of Power of Municipalities to Enter into Collective Agreements*, published by The State, County and Municipal Workers of America (C.I.O.), March, 1942.

⁷⁷ Charles S. Rhyne, *Labor Unions and Municipal Employee Law*. This report, and the 1941 study (*supra*, footnote 59), provide the most exhaustive study available of the legal aspects of the question of unionism in the municipal service.

gress or by executive order of the President, and implied that it could not be given constitutionally. Disputes between New York City, Newark, and Omaha and their employees were involved. While the dispute in the particular case primarily concerned statutory interpretation and legal power, the more important question of public policy was also involved. Shall we continue to exempt problems of maladjustment in the employer-employee relationship from the jurisdiction of agencies such as the National Labor Relations Board and the National War Labor Board when the employer is a city or other governmental unit?⁷⁸

WAR AND POSTWAR PERSONNEL PROBLEMS

During World War II, municipal personnel agencies had new problems to face.⁷⁹ The most important of these was the securing of competent personnel to fill the places of persons leaving for military service. The percentage of municipal employees who entered military service varied, the average being about 10 per cent. The general policy of cities was to give military leave to employees entering military service, with the right of reinstatement in their former position when they were released from military duty. The time within which employees were required to apply for reinstatement varied from one month to one year, some requirements providing merely that application for reinstatement must be made within a reasonable period.

In most cities, vacancies resulting from the personnel leaving for military service were filled by appointments on a temporary basis, without permanent civil service status being given. This proved a serious handicap in attracting new employees. The municipal service, never too attractive, became less so when the position was only temporary and would probably end at the termination of the war.

⁷⁸ For the argument in favor of extending the jurisdiction of such agencies to cover government employees, see David Ziskind, *op. cit.*, p. 247. On the conflict between the United States Conference of Mayors and the National War Labor Board as to the latter's jurisdiction over disputes involving the pay of municipal employees, see *The New York Times*, Dec. 9 and 10, 1942.

⁷⁹ James M. Mitchell, "Overcoming Wartime Personnel Shortages," 24 *Pub. Management* 232 (Aug., 1942); J. J. Donovan, "Wartime Personnel Practices in Cities," 25 *ibid.* 327 (Nov., 1943); Leonard D. White, *Civil Service in Wartime* (1945).

Among the means used to meet this situation were the recalling of retired employees for temporary wartime service, the greater use of women, the use of the physically handicapped, and the lowering or waiving of requirements and qualifications. Cities recognized, however, that it was desirable to require the temporary appointees to meet the minimum requirements of the position so that the appointments could be made permanent if persons on military leave did not desire to return to their old positions at the end of the war.

In the postwar period, the question of giving a qualifying examination to people returning from the military service and seeking reinstatement in the municipal service arose.⁸⁰ This applied especially to the physical condition of such people. Another question was whether the time spent in military service should be included in computing the employee's eligibility for salary increases, vacation leave, sick leave, and retirement. Should his position and salary be the same as when he left for military service, or that to which he would normally have advanced had he remained in the municipal service? The practice of cities in meeting these problems varied.

Another problem which had to be faced was the preference to be given veterans who sought government employment after discharge from military duty.⁸¹ Should the veteran be given preference, in either selection or promotion? Approximately two-thirds of the cities having a population of 10,000 or above were in 1945 giving preference to veterans who desired to secure municipal employment. In most cases this consisted in giving preference either to veterans who take an examination or to those who pass such an examination. In a few cases, the preference consisted in waiving requirements.

Giving preference to veterans is poor personnel administration. It is a costly and unsatisfactory method of showing gratitude for military service. It is contrary to the principle of selection on the basis of merit and, insofar as it results in the selection of less competent personnel, it means less satisfactory administration of public affairs.

⁸⁰ J. J. Donovan, "Planning Postwar Personnel Policies," 27 *Pub. Management* 4 (Jan., 1945).

⁸¹ Leonard D. White, *Veterans' Preference* (1944).

In some cities, preference for veterans applies not only to the original selection but to promotion after they have entered the service. This is generally considered more detrimental to good public personnel administration than preference in the original selection. It results not only in promoting less competent persons but also in demoralizing and discouraging those in the government service who have not served in the armed forces but are performing essential duties in an efficient manner.

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Judicial Organization and Administration

Regulation by law of the relationship between individuals and between individuals and the government is necessary in any society. With a large percentage of our population living in cities, regulation of private conduct becomes more detailed and complex. Violations of these regulations—federal and state laws and municipal ordinances—are inevitable. And in the process of administration by public officials, these violations of state laws and municipal ordinances are detected. The police will find cases of violation of the criminal laws of the state and, if successful, apprehend the guilty persons. The building inspector will find violations of the building code; there are speed regulations, licensing laws, regulation of morals, and many others. Violations of such regulations are certain to arise. In some cases there are disputes as to whether there has been a violation, or whether the person accused is the one who has committed the violation. Tribunals must be established to assess the penalty where guilt of the violation of a law—whether state or municipal—is admitted, and to determine whether the accused is guilty, where such guilt is denied. The tribunals established for this work are known as courts.¹

The cases referred to above are between the government, either state or municipal, and individuals. Disputes also arise between individuals. The suit may be for the collection of damages growing

¹ For a study of the cost of administering justice in Ohio cities, see R. Reticker and L. C. Marshall, *Expenditures of Public Money for the Administration of Justice in Ohio*, 1930, chap. iv. Also see L. C. Marshall, "The Judicial House That Jack Built," 22 *Nat. Mun. Rev.* 423 (Sept., 1933); F. J. Loesch, "Reducing the Cost of Justice," 22 *ibid.* 427 (Sept., 1933).

out of an automobile accident, the collection of wages earned by a laboring man, or the collection of damages for refusal to carry out the provisions of a contract. Some orderly means must be provided for the settlement of such disputes. This again is a function of the courts. Whether the case is criminal or civil, the objective sought is to do justice as between the parties, to arrive at a just decision, one which will be fair to both parties. When the case involves a crime, the interest and welfare of the individual and of society must both be considered. The state or society is one of the parties in such cases, and any action taken must weigh the result with this in mind. Whether the case is civil or criminal, the disadvantage of delay in settlement is obvious. Likewise the advantage of providing an organization and procedure by which disputes can be settled, especially those between private litigants, without an unreasonable expenditure of money is apparent. Thus a court may arrive at a just result in determining that A owes B the \$7.00 claimed. But if it takes B a year to collect through the courts and costs him \$6.00, the machinery provided cannot be considered satisfactory for adjusting this type of dispute.

The cases which arise in cities are usually adjudicated in the regular state courts which have jurisdiction over the city. The same court will try cases which arise in either the rural or the urban parts of the county. The general practice is to establish a system of state courts, justices of the peace, county courts, and district or circuit courts, with power to try cases arising within the territory over which they have jurisdiction. As a city increases in population, the number of cases which arise within it also increases. To meet this situation, a special judicial organization for cities has been provided in most states. Generally, this is limited to the larger cities.

The judicial organization varies in the different states. At the base of it there is usually a court presided over by a police magistrate or a justice of the peace. Above this court is a court having original jurisdiction in more important cases, and also having appellate jurisdiction. These courts are known by a variety of names—county courts, district courts, and circuit courts. As has been pointed out above, these are not strictly municipal courts. They are state courts which try cases arising in cities. Appeals may be

taken from such courts to higher courts, there sometimes being an intermediate court of appeals, and finally to the supreme court of the state.

JUSTICE OF THE PEACE COURTS

In rural areas and in most cities which have not provided a municipal court, the justice of the peace is the lowest rung in the judicial hierarchy. In larger cities there are several justices of the peace. The jurisdiction of the justice of the peace is limited to those criminal cases where the penalty which may be imposed is not great, and to civil cases where the amount in controversy is small. The justice of the peace may hold preliminary hearings in more important criminal cases and bind persons over to the grand jury.

The justice of the peace courts have been severely criticized, and justly so. The justices, who are generally elected, are in most cases not trained in the law; and those with such training are usually interested in the position because they have not been successful in the practice of the law. In most states the position does not carry a salary, the justice being paid by fees. The amount of these depends upon the cases brought before him. His conduct and decisions are often influenced by the possible effect on the number of future cases which will be brought before him, rather than by what will bring justice as between the parties.

The weaknesses of the justice of the peace system should not be taken lightly on the ground that the cases are unimportant since the penalties in criminal cases or the amount involved in civil cases is not great. To the person before the court, the case is important. A suit involving \$10.00 is as important to a poor person as one involving \$10,000 is to a wealthy person. The citizen's attitude toward government generally may be formed on the basis of his contact with a lower court. And if that court is a justice of the peace, the chances of his impression being unfavorable are great.

INTERMEDIATE COURTS

Above the justice of the peace, there are in the judicial hierarchy intermediate courts which have appellate jurisdiction from the justice

of the peace, and original jurisdiction in more important cases. If the amount in controversy in a civil suit exceeds a certain sum, or if the crime with which a person is charged is a felony, these courts have original jurisdiction. In some states, these courts are organized on a county basis and known as county courts; in other states, counties are combined for this purpose, the courts being known as circuit courts, district courts, or superior courts. The judges of these intermediate courts are generally elected, but in a few states they are appointed. These courts have general jurisdiction throughout the county, hearing cases arising in both urban and rural areas.

MUNICIPAL COURTS

In some cases tribunals which can be more accurately termed municipal courts have been established. There has been recognition of the need for a special judicial organization in cities and an attempt has been made to provide a specialized judicial administration. The chief object in the creation of a municipal court is to unify judicial organization in cities by the creation of a single tribunal. Branches of this court are then established to handle cases of a particular type. The judge who presides over one of these branches can specialize in a particular type of work.

Chicago was one of the first cities which attempted to establish a unified municipal court. A special judicial organization for cities had been provided in other states before this time, but the Chicago court was unique in that it was the first effort at unification. A constitutional amendment of 1904 in Illinois provided that the legislature might abolish the office of justice of the peace and police magistrate and create a municipal court with such jurisdiction and practice as the legislature might prescribe. In 1905 the voters of Chicago approved an act providing for the creation of a municipal court, and in 1906 the court was established. The act abolished the independent justices of the peace and police magistrate courts and conferred their jurisdiction upon the new municipal court. The new court has been given jurisdiction over misdemeanor cases, and the power to examine and hold for trial in felony cases. Its civil jurisdiction varies, depending upon the amount involved in the controversy.

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A single court with a chief justice and 36 associate justices was substituted for the 54 independent justices of the peace and police magistrates. The need for unification of the judicial tribunals within a city was recognized. The act did not go far enough, however, for several separate and independent courts still exist, such as the circuit, superior, county, probate, and criminal courts.

A second important feature of the act was to make the chief justice the administrative head of the court in fact as well as in name. The act provided that the chief justice,

in addition to the exercise of all the other powers of a judge of said court, shall have the general superintendence of the business of said court; he shall preside at all meetings of the judges and he shall assign the associate judges to duty in the branch courts, from time to time, as he may deem necessary for the prompt disposition of the business thereof, and it shall be the duty of each associate judge to attend and serve at any branch court to which he may be assigned. . . . The chief justice shall also superintend the preparation of the calendars of cases for trial in said court, and shall make such classification and distribution of the same upon the different calendars as he shall deem proper and expedient. Each associate judge shall at the commencement of each month make to the chief justice, under his official oath, a report in writing of the duties performed by him during the preceding month, which report shall specify the number of days' attendance in the court of such judge during such month, and the branch courts upon which he attended, and the number of hours per day of such attendance.

Power to determine its own rules of procedure was also conferred upon the court. This enabled the court to abandon the highly technical and cumbersome rules provided in the statutes and to adopt a simple procedure adapted to the needs of the branches into which the court was organized. In referring to the rules of procedure adopted by the court, Herbert Harley of the American Judicature Society has said: "All pleadings are in simple, straight-forward language. Annually, thousands of cases are determined by the mere entering of judgment on default, because the defendant does not file an affidavit of merits. In other Illinois courts these matters would clog the calendars for months and years. In the Municipal Court they are passed upon almost automatically.

This is one of the big reasons why this is the greatest commercial court in the world."²

Acting under the power conferred upon it to determine its organization and procedure, the court adopted the practice of segregating cases according to the nature of the question involved and assigning each type to a single judge. The Court of Domestic Relations, which is merely a branch of the municipal court, was established in 1911. Other specialized branches of the court which have been established are the Speeders' Branch, the Morals Court, the Boys' Court, and the Small Claims Branch.

The need for a special organization and procedure for courts in cities has been recognized in other states. Among the cities in which municipal courts have been established are Cleveland, Detroit, Philadelphia, Pittsburgh, Buffalo, Cincinnati, Milwaukee, Kansas City (Mo.), and Atlanta. The Municipal Court of New York City is one in name rather than in fact. It is composed of 48 judges holding court in 25 independent court houses. This court, states Dr. Willoughby, offers an illuminating example of the manner in which the administration of justice in a large city should not be handled.³

JUDICIAL ORGANIZATION

One of the greatest needs in the administration of justice in cities is a unified judicial organization. Where separate and independent courts are in operation, waste and inefficiency result. There is in such cases unnecessary duplication of administrative organization. Another advantage is the opportunity for specialization by the judges. The establishment of branches of the municipal court of Chicago, with judges specializing in a particular type of case, has been referred to above. In the Recorder's Court of Detroit we see the advantage of the complete unification of a city's criminal courts. This has made it possible to adopt an efficient system of

² Herbert Harley, "A Modern Experiment in Judicial Administration: The Municipal Court of Chicago," annual address to the Louisiana State Bar Association, May 8, 1915, republished by the American Judicature Society. Quoted in W. F. Willoughby, *Principles of Judicial Administration*, p. 286. A civil practice act which became effective on January 1, 1934, is tending to remedy the unsatisfactory conditions in the other Illinois courts to which Mr. Harley referred.

³ W. F. Willoughby, *op. cit.*, p. 291.

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specialization in the trial of criminal cases. One division of the court handles ordinance cases, another petty misdemeanors, a third major misdemeanors, etc.⁴

A question which arises in connection with judicial organization is the selection of judges. Regardless of the organization provided, the results will not be satisfactory if inferior judges are selected. In discussing the Municipal Court of Chicago the Illinois Crime Survey said:

The majority of the judges now sitting are fitted neither by experience, education, nor, what is more important, sufficient professional standards to discharge with credit the great responsibilities and powers which they possess under the law. The court is full of incompetence, of political influences, of lamentable laxness in meeting an unprecedented tide of crime. In the hands of such a staff the court, technically well organized and full of possibilities for good, yields a sorry product. It is a clear demonstration of the fact that no matter what may be the theoretical advantages of the structure of the court, a personnel so lacking in quality will operate it badly.⁵

Popular election is the plan most generally used for the selection of judges, but it has not proved satisfactory. It means that, as in the case of other officers, ballyhoo and showmanship all too often become the determining factors in the selection of a municipal judge. Where judges are popularly elected, attending weddings, funerals, christenings, banquets, barbecues, dances, clambakes, holiday celebrations, dedications of buildings, receptions, opening nights, first showings of films, prize fights, bowling matches, lodge entertainments and church festivals is often more important than an ability to preside over a court.⁶

The competency of the electorate to pass upon the qualifications of a man for a judgeship may also be questioned. While a strong case can be made for the popular election of policy-determining officers, an entirely different question is presented in the case of a judge. Even though all the facts are before them, it is questionable whether the people can, at the end of a judge's term, determine

⁴ A. Mandel, "Appraising Detroit's New Criminal Court," 10 *Nat. Mun. Rev.* 550 (Nov., 1921).

⁵ *Illinois Crime Survey*, p. 393.

⁶ *Criminal Justice in Cleveland*, p. 263.

whether he has been capable and efficient. This is especially true in large cities where the number of judges to be elected is such that a discriminating and intelligent vote is impossible. Because of the technical nature of judicial administration, popular election is an unsatisfactory method of selecting judges.

Appointment has been advocated by many as a better method. This, it is said, will remove the judge from politics and also lead to selection on the basis of merit. The Seabury investigation in New York City, where the judges are appointed by the mayor, shows, however, that appointment does not necessarily remove judges from politics and political control. The report revealed that merit was not the determining factor there, but that judge-ships were treated as political spoils to be given in recognition of distinguished party service. Appointments seemed to be made by the district leader, approval of the mayor being a mere formality.⁷

The boss or political leader has an important part in the selection of both elective and appointive judges. The degree to which this is true varies from city to city, and also with the judge. The Seabury investigation showed that many district leaders maintained control over the judges. Judges testified that these leaders interceded with them with reference to pending cases. Sometimes the leader would come into court, sometimes he would call judges at their home, and in some cases he talked with them at the club. District leaders admitted under oath that they went into magistrates' courts and interceded with the magistrate for leniency toward defendants. After reviewing the testimony regarding the conduct of magistrates, the Seabury report concluded: "That persons of the type of those above mentioned were permitted to hold judicial office is a sad commentary upon the political power that determined their selection, upon the mayors who vested them with the authority of office, and upon the public that suffered so long in complacent silence."⁸

⁷ For an excellent summary of the findings of the Seabury investigation, see Raymond Moley, *Tribunes of the People*, chap. xiii.

⁸ *Final Report of Samuel Seabury in the Matter of the Investigation of the Magistrates' Courts etc.*, March 28, 1932, p. 55. Also see S. Ervin, "How Magistrates' Courts Defile Justice," 20 *Nat. Mun. Rev.* 573 (Oct., 1931); J. T. Salter, "A Philadelphia Magistrate Tells His Story," 22 *ibid.* 514 (Oct., 1933).

Other methods than the selection of judges by popular election or by the mayor have been tried or suggested. One is appointment by the governor. This was used for the selection of justices of the peace in Chicago until that office was abolished by the constitutional amendment of 1904 creating the municipal court. The justices were appointed by the governor, by and with the advice and consent of the senate, but only upon the recommendation of a majority of the judges of the circuit, superior, and county courts. The experience in this case demonstrated that state appointment is no guarantee of the selection of a high type of judge. Another suggested method is that the judges of the inferior or lower courts be selected by the judges of the higher courts. It has also been suggested that the chief justice of the municipal court be elected and have the power to appoint his associates. Unfortunately, none of the methods which have been tried can assure the selection of a capable and honest personnel which will be entirely free from political interference.

JUDICIAL PROCEDURE

A simplified procedure in both civil and criminal cases is another needed reform. This is especially apparent in civil cases where the amount in controversy is small. A complicated judicial procedure makes the services of an attorney necessary. The amount involved, however, is so small that the fee paid the attorney will be out of proportion to the amount collected, although it may be reasonable in view of the work done. Likewise the court costs will be out of proportion to the amount involved. The expense is more than the traffic will bear.⁹ The weakness is in the procedure by which such sums are collected—no tribunal has been created with a procedure suited to such cases. "For ordinary causes our contentious system has great merit as a means of getting the truth," states Dean Pound. "But it is a denial of justice in small causes to drive litigants to employ lawyers and it is a shame to drive them to legal aid societies to get as charity what the State should give as a right."¹⁰

⁹ See Herbert Harley, "Court Organization for a Metropolitan District," 9 *Am. Pol. Sci. Rev.* 507 (Aug., 1915).

¹⁰ Roscoe Pound, "Administration of Justice in the Modern City," 26 *Harvard Law Rev.* 302, 318 (Feb., 1913).

Recognizing the fact that to make attorney fees and the use of juries necessary in cases involving small sums is to "indulge in extravagance which defeats justice at the outset," several cities have provided special courts, or branches of regular courts, with a different type of procedure, to handle such cases. Small claims or small debtors' courts originated in Kansas in 1913. The movement spread to other states, such courts usually being found only in the larger cities. While the organization, procedure, and jurisdiction of these courts vary, the object sought in all cases is to eliminate the weaknesses of the trial of these cases by formal court procedure—delay, court costs, and the need for the services of an attorney. In referring to the small claims branch of the Chicago Municipal Court, Dr. Willoughby says: "The procedure is marked by a simplicity and dispatch. The judge is in charge and pays little regard to technicalities. There is no need for the presence of attorneys and their participation is discouraged."¹¹ A similar type of simplified procedure is followed in the small claims courts of other cities. On an average, cases are dispatched in fifteen minutes. Not only is there the saving in attorneys' fees, but court costs are reduced, the total fees and costs usually amounting to less than one dollar.

The small claims court is a reasonable and satisfactory method of handling small cases. It is an attempt to fit judicial organization and procedure to the task to be performed. Experience demonstrates that it is a more satisfactory method of securing the just settlement of such cases than the cumbersome and expensive procedure necessary when these cases are heard in the regular courts. Such courts should be established in all cities where the number of this type of case is sufficient. In other cities, though such cases are tried in the regular courts, the procedure should be simplified.¹²

An attempt has been made in several cities to secure not only specialization of judges but simplification of procedure. The domestic relations, morals, juvenile, and traffic courts may be cited as illustrations.¹³ The advantage of having a simplified procedure

¹¹ W. F. Willoughby, *op. cit.*, p. 314.

¹² On the small claims court, see *ibid.*, chap. xxiii; R. H. Smith, *Justice and the Poor*, chap. viii; F. R. Aumann, "Des Moines Tries the Conciliation Court," 17 *Nat. Mun. Rev.* 211 (Apr., 1928).

¹³ See R. S. Saby, "Simplified Procedure in Municipal Courts," 18 *Am. Pol. Sci. Rev.* 768 (Nov., 1924). For interesting experiments in simplified pro-

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for dealing with juvenile offenders seems apparent. Common-law rules of evidence should give way to common sense in handling such cases. In domestic relations cases conciliation rather than adjudication should be the objective. The procedure in the two types of cases may differ greatly. Where the volume of work is sufficient, as it is in large cities, division of a court into branches makes possible the adaptation of procedure to the type of case involved. It also makes it possible for a judge to specialize and become an expert in handling a particular type of case. Juvenile courts or the juvenile branch of a municipal court illustrates this advantage.

CRIMINAL CASES

Judicial organization and procedure have also proved unsatisfactory in criminal cases. As in civil cases, the weakness is not in the substantive law but, as stated in the report of the Cleveland Crime Survey, in the fact that cities suffer from an antiquated and cumbersome criminal procedure utterly unsuited to the modern conditions of industrial life. The unsatisfactory crime conditions in American cities can be attributed in part to this overcomplicated, technical criminal procedure.¹⁴

Coroner

The weakness of the judicial organization for trying criminal cases may be illustrated by tracing a case from the time of arrest to final sentence.¹⁵ In the case of sudden deaths, where violence or other illegal means are suspected, a coroner's inquest is held to determine the cause of death and to secure information which may lead to the detection and prosecution of the persons who are responsible.¹⁶

cedure for traffic cases, see S. E. Rose, "Detroit's Traffic Violation Bureau," 14 *Nat. Mun. Rev.* 157 (Mar., 1925); G. G. Hulse, "Chicago's Disposition of Street Traffic Violations," 16 *ibid.*, 498 (Aug., 1927).

¹⁴ See, for example, the statement by Judge Marcus A. Kavanaugh quoted in W. F. Willoughby, *op. cit.*, p. 6.

¹⁵ Police administration and the probability of arrest are beyond the scope of this study.

¹⁶ On the office of coroner, see O. T. Schultz and E. M. Morgan, *The Coroner and the Medical Examiner*; J. A. Fairlie and C. M. Kneier, *County Government and Administration*, pp. 249-251; W. F. Willoughby, *op. cit.*, chap. xiii.

To conduct such an inquiry effectively often requires both medical and legal knowledge. A few states require coroners to be practicing physicians or to have medical training. Connecticut alone requires them to have a knowledge of law. In actual practice in the great majority of cases, the coroner is a "poorly paid, untrained and unskilled individual, popularly elected to an obscure office for a short term. Even in large counties he often serves with only a small staff of mediocre ability and with inadequate equipment."¹⁷

A number of studies of the coroner's office agree that the prevailing arrangement is unsatisfactory and the office should be abolished. A report on the office of coroner in New York City in 1914 stated that the office represented a "combination of power, obscurity and irresponsibility which has resulted in inefficiency and malfeasance in the administration of the office." It pointed out that

of the sixty-five men who held the office of coroner since the consolidation of Greater New York, not one was found to have been qualified by training or experience for the adequate performance of his duties. Nearly all had been nominated "to balance the ticket," to represent a given race, religion, class, or faction. Most of them have been absurdly ignorant as to the legal and medical aspects of their work. Favorite causes of death have been assigned without a shadow of reason to doubtful cases, and terms rejected by modern science as meaningless have frequently been used in statements of the causes of deaths.¹⁸

Studies in a number of other states indicate that this situation is not limited to New York City. The Criminal Justice Survey in Cleveland (1922), the Missouri Crime Survey (1926), and the Illinois Crime Survey (1929) all agree on the inadequacy of this office. The question arises as to what disposition should be made of the duties now performed by the coroner. Massachusetts, New Hampshire, and New York City provide for a preliminary examination of sudden deaths under expert medical direction by medical examiners. If this preliminary examination indicates the need for further investigation, an inquest is held before a court at which the prosecuting attorney may be present and examine the witnesses.

¹⁷ O. T. Schultz and E. M. Morgan, *op. cit.*

¹⁸ L. W. Wallstein, *Report on Special Examination of the Accounts and Methods of the Office of Coroner in the City of New York.*

This plan has shown marked merits over the coroner system. However, the medical examiners and prosecuting officers are independent of one another, and there may be lack of cooperation. Since the inquest is in effect the first step in a criminal prosecution, it seems that a better arrangement would be to make the prosecuting attorney responsible for inquests, with authority to appoint medical examiners. This is the method used in Nebraska, where the county attorney is ex officio coroner. The subcommission on police of the Crime Commission of New York recommended a similar plan.

Preliminary Hearing

As a result of the findings of the coroner's inquest the person who appears to be guilty of the crime may be arrested. In many cases, of course, where the guilty party is known, the arrest precedes the inquest. The accused person is taken before a judge for a preliminary hearing. The purpose of this hearing is to determine whether, in the case of offenses below the grade of felony, the accused shall be proceeded against in the courts, and, in the case of felonies, whether the accused shall be held for further examination—bound over to the grand jury. In any case, the question in the preliminary hearing is not the innocence or guilt of the accused, but whether there is sufficient evidence to bring him to trial (if the offense is below the grade of felony) or to hold him for further investigation by the grand jury (in the case of felonies).

The preliminary hearing in small cities and rural areas is held by justices of the peace. In cities it is held by judges of inferior or lower courts, such as magistrates or judges of the municipal court. Though conducted by judges of inferior courts and generally considered to be inconsequential, the preliminary hearing is, as Raymond Moley points out, "a most important link in the process of administering justice. It might be concluded with a good deal of justification that so far as the effective enforcement of criminal law is concerned the preliminary hearing is more important than the trial itself." He says that in 1926 the percentage of cases terminated in preliminary hearings was as follows: New York, 58.7; Chicago, 48.8; Philadelphia, 78; St. Louis, 34.7; Cleveland, 38.6; and Milwaukee, 17.3¹⁹ At that time the decisions made in preliminary

¹⁹ Raymond Moley, *Our Criminal Courts*, p. 26.

hearings by judges of inferior courts accounted for the disposal of approximately 50 per cent of the criminal cases.

Two criticisms of the preliminary hearing in cities have been made. One is that it is conducted under conditions which are not conducive to satisfactory results. Cases are generally heard with great speed. "A casual, careless and unintelligible presentation of evidence," says Raymond Moley, "precedes a hasty guess of judgment." The second criticism of the preliminary hearing is that too often it is subject to political manipulation. "Machine politics," says Moley, "is always heavily entrenched in the inferior courts. If there is to be any 'fixing' of criminal cases, the wise and effective politician does his work here. . . . The forces which so often effectively prevent the adequate prosecution of professional criminals concentrate their strength upon the preliminary hearing. The weakest spot in the system is the one at which greatest pressure is directed."²⁰

RELEASE ON BAIL

If the judge decides that the prisoner should be held for further investigation by the grand jury, he usually sets bail. This right, except in capital cases, is guaranteed by the constitutions of most states. The accused himself deposits, or his bondsmen agree to pay, the amount of the bail if he fails to appear when called upon. The principle of bail is meritorious. The law assumes that a person is innocent until proved guilty, and if he were not permitted his freedom under a bail system, he would in effect be punished before trial. In several cities, however, the administration of bail bonds has proved unsatisfactory. Political leaders or bosses are able to say a word to the judge and have the bail fixed at a small sum. The amount forfeited being small, it is then advantageous for the accused to escape the jurisdiction of the court.

Another serious defect of the bail bond system is the acceptance of bondsmen against whom the bond cannot be collected. Professional bondsmen have arisen who furnish bail bonds for a consideration or fee. The professional bondsman often works with

²⁰ *Ibid.*, pp. 29-30.

the political leader. The result of the latter's political influence is that there is inadequate scrutiny of the bondsman's ability to pay in case of forfeiture, and the effort to collect in such cases is inadequate.²¹ The amount of forfeited bonds which have not been collected in cities is appallingly large. The Missouri Crime Survey revealed that in the city of St. Louis and in 38 counties of that state, \$292,400 in bail was forfeited in one year. Of this amount, \$20,590 was reduced to judgment and \$1572 collected.²² A similar condition has been found in many of our larger cities.

Even though political considerations could be eliminated, the administration of bail bonds in our larger cities would remain a difficult task. How is the judge to determine whether the property offered as security is of sufficient value to indemnify the state in case of forfeiture, that it is not subject to other encumbrances, or that it has not been offered and accepted by other judges as security? The solution of this difficulty seems to be the creation of a central bail bond authority. This would centralize responsibility for the acceptance of bail. Some efforts in this direction have been made in Chicago. A bail bond bureau has been installed in the office of the state's attorney in which a record is kept of all bonds given and of all bondsmen who furnish bonds in the criminal court.²³ The bureau investigates every case where bond is given, both as to the financial ability of the bondsmen and as to the previous record of the accused. It makes recommendations to the judge as to whether the bond should be accepted. While the final decision lies with the judge, the recommendation of the bail bond bureau seems to carry weight. Unfortunately, the plan applies only to the criminal court. In 1927 a bail bond branch was established in the municipal court of Chicago. Before that time each of the municipal court judges approved bonds and, as the Illinois Crime Survey says, they "relied solely on the statements contained in the schedule of application. They had no way of determining in whom the title rested covering the property named in the schedule, or whether the property had been scheduled in other bonds, over and

²¹ For examples of this practice, see *Missouri Crime Survey*, p. 212; Raymond Moley, *Our Criminal Courts*, pp. 49-50.

²² *Missouri Crime Survey*, pp. 198-199.

²³ Raymond Moley, *Our Criminal Courts*, pp. 57-58.

above the owner's equity."²⁴ It was to meet this situation that the bail bond branch was established. By a two-thirds vote the judges agreed that all bonds presented to them for acceptance would first have to go to the bond clerk's office for approval. This approval was to be given only after evidence of title had been investigated and the bondsman was found financially able to pay in case of forfeiture.

Such a plan for a central bail bond bureau or branch seems desirable in larger cities where the amount of work is sufficient. The bail bond laws should also be amended to provide heavy penalties for perjury by bondsmen as to the value of their property and the amount of their liabilities. This should be followed by more vigorous activity on the part of prosecuting attorneys to collect forfeited bonds and also to prosecute criminally the bondsmen who are guilty of perjury or fraud.

Grand Jury

As has been pointed out above, if the offense charged is a felony and the judge finds at the preliminary hearing that there is probable cause to believe the accused guilty, the accused is bound over to the grand jury either with or without bail, depending upon the nature of the offense. The work of the grand jury is not limited, however, to cases in which there has been a preliminary hearing before a judge or committing magistrate. Cases may be considered where no arrest has been made. Neither is the grand jury bound by dismissals at the preliminary hearing. Cases may be considered by the grand jury and indictments returned, even though the judge or magistrate has dismissed the charge after the preliminary hearing.

The grand jury does not determine whether the person is innocent or guilty of the offense charged. The question for the grand jury is whether there is "sufficient grounds," "probable cause," or a "*prima facie* case" for holding the accused for trial. The proceedings before the grand jury are *ex parte*, the accused not being heard in his own defense. Although in theory and in law the grand jury brings indictments on its own initiative, in actual practice the prosecuting attorney's opinion as to whether the accused should be brought to trial is usually the determining factor. It is generally his

²⁴ *Illinois Crime Survey*, p. 410. Also see A. L. Beeley, *The Bail System in Chicago*.

duty to gather the evidence and present it to the grand jury. Since it will be the duty of the prosecuting attorney to prosecute the case if an indictment is returned, and since the question before the grand jury is whether the evidence is sufficient to secure a conviction in a court of law, it is natural that his advice and recommendations should be relied upon.

It has been pointed out above that approximately 50 per cent of the criminal cases are eliminated in the preliminary hearing. The importance of the grand jury in this respect varies. The Missouri Crime Survey stated that "the Grand Jury plays a negligible role in elimination." Of 5198 cases bound over to the grand jury after preliminary hearing, only nine were eliminated by the grand jury's refusal to return a true bill.²⁵ The Illinois Crime Survey indicated that the grand jury continues to play a more significant part in the administration of the criminal laws of that state. Of the 16,812 cases studied, 7340, or 43.66 per cent, were eliminated in the preliminary hearing. This left 9472 cases to enter the grand jury. Of these, 2034, or 12.10 per cent of the total, were eliminated in the grand jury.²⁶ The figures indicate that in Illinois the grand jury still functions as a sifting machine in criminal cases.

At common law the grand jury consisted of from 13 to 23 men, with the concurrence of 13 necessary to indict. Several states have reduced the number of members of the grand jury below that provided at common law. The number in these states varies from seven to 18. In such states the number of members necessary to vote an indictment has, of course, likewise been reduced. In Montana, Oregon, and Utah, for example, where the grand jury has seven members, five are needed to return a true bill.

Several studies have questioned the value of the grand jury. Responsibility is not centralized and clearly defined. Since the deliberations and vote are secret, it is not possible to place responsibility upon any definite persons, either for bringing indictments or for failing to do so. Unfortunately, political considerations often enter in both cases. Unfounded and malicious accusations have been made and indictments returned "for the sole purpose of revenge and not from a desire to vindicate the law." Cases have been

²⁵ *Missouri Crime Survey*, p. 274.

²⁶ *Illinois Crime Survey*, pp. 35-36.

"killed" in the grand jury because the person involved had political prestige and could "pull wires."

It has been pointed out above that the grand jury relies largely upon the advice of the prosecuting attorney. In this connection the report on Criminal Justice in Cleveland stated: "Generally the grand jury does little more than rubberstamp the opinion of the prosecutor. It is almost exclusively dependent upon him for its knowledge of the law, and for its information on the facts it is almost entirely dependent on his zeal and willingness."²⁷ If he actually has this power in practice, why not also give him the responsibility? This has been done in about one-half of the states, the use of the grand jury being limited and its functions given to the prosecuting attorney.

Information

Where the grand jury is not used, prosecution is by information. An information has been defined as "an accusation in the nature of an indictment, from which it differs only in being presented by a competent public officer on his oath instead of a grand jury on their oath." It "differs in no respect from an indictment in its form and substance, except that it is filed at the mere discretion of the proper law officer of the government *ex officio*, without the intervention of a grand jury."²⁸ Some of the states which provide for prosecution by information limit its use, requiring indictment in capital cases or where the punishment is for life or for a long term of years.

The objection most generally made to prosecution by information is that it places too much power in the hands of a prosecuting attorney. He may arbitrarily prosecute without sufficient grounds, or fail to prosecute even though the evidence warrants. This is especially dangerous, it is said, where those accused have political influence. Various plans are used to meet this objection. Some states require the prosecuting attorney to inquire into all cases where there has been a preliminary hearing and the accused has

²⁷ *Criminal Justice in Cleveland*, p. 212.

²⁸ Bouvier's *Law Dictionary*, vol. 2, p. 1562. On prosecution by information, see Justin Miller, "Informations or Indictments in Felony Cases," 8 *Minn. Law Rev.* 379 (Apr., 1924).

been committed to jail or held on bail. If he determines that an information ought not to be filed, he must present his reasons in writing to the clerk of the court. In some states the judge having jurisdiction over a case may require the prosecuting attorney to prosecute any accused person by information. The greatest protection against failure to act, however, is in providing for the occasional use of a grand jury. In several states judges are empowered to call grand juries, and in others these juries are called upon petition of a certain number of taxpayers. In actual practice grand juries are seldom used in states using prosecution by information but where these juries may be called for special purposes. Experience seems to indicate that prosecution by information is more satisfactory than prosecution by grand jury indictment.²⁹ The Illinois Crime Survey, in recommending this method of prosecution, concluded that "the prosecution in Illinois is unduly handicapped by the constitutional *requirement of an indictment* by the grand jury. The innocent citizen need not fear unfounded prosecution by information. If the state's attorney wished to prosecute him, he could easily obtain an indictment from a grand jury which he dominates."³⁰

Petit Jury

The next step in the prosecution of an accused person is trial before a petit or trial jury. At common law the petit jury consisted of 12 men, a unanimous agreement being required in order to reach a verdict. The petit jury has been adopted in all states, with modifications in some cases as to its size and the number necessary to arrive at a verdict.

The petit jury as an instrumentality in the enforcement of criminal law has been seriously criticized. It has been condemned as "a relic of barbarism," as the "arch obstructor of justice in all American courts," and as an institution which is "ludicrous, illogical, impractical, and thwarts justice." The system of selection often involves time and expense. Those best qualified to serve are exempted or excused. Probably no political institution is so generally condemned. It has been attacked on the grounds that it "encourages

²⁹ See W. F. Willoughby, *op. cit.*, pp. 188-189.

³⁰ *Illinois Crime Survey*, p. 218.

pettifoggers, ambulance-chasing, shystering; that it lowers the standard of the bar; that it decreases public confidence in the administration of justice, and it reduces respect for the law."³¹

The dissatisfaction with trial by jury is due in great part to the common-law requirement of unanimity. This has been referred to as "an antique absurdity, which has too long fettered the administration of justice."³² While a unanimous verdict is still required in all states in capital cases, some provide for less than a unanimous verdict in other cases. Three-fourths of a jury may render a verdict in Oklahoma and Texas in cases below the grade of felony; in Montana a two-thirds vote is sufficient in such cases. Although this is an improvement, the goal should be a less extensive use of the petit jury.

The personnel or the quality of the petit jury has also been criticized. In addition to the list of persons exempted from jury service by statute, others may avoid jury service if they give the "right" answers when they are being questioned as prospective jurors. They have read of the case, they have formed an opinion which they are afraid cannot be removed by evidence, or they are opposed to the death penalty. These and many other loopholes are available for persons who want to dodge jury service—and experience demonstrates that the better-educated and more successful business classes want to do so. The situation was stated in the Cleveland Crime Survey as follows: "In Cleveland, as in many other large cities, most citizens of means or intelligence avoid service. This avoidance has become traditional, so that it is a kind of mild disgrace for a so-called respectable citizen to allow himself to be caught for jury service—like being swindled, for instance."³³ The result has been a jury composed of persons who are drawn from the less fortunate economic classes and those who have had less education. This is generally considered to be a weakness of the jury system.³⁴

³¹ See J. A. Fairlie and C. M. Kneier, *op. cit.*, pp. 260-265.

³² H. C. Caldwell, "The American Jury System," 22 *Am. Law Review* 853 (1888). Also see J. F. Baker, "Should Trials by Jury Be Abolished?" 66 *Albany Law Journal* 307 (1904); J. C. McWhorter, "Abolish the Jury," 57 *Am. Law Rev.* 42 (1923).

³³ *Cleveland Crime Survey*, p. 344.

³⁴ Cf., however, Raymond Moley, *Our Criminal Courts*, p. 110.

The common-law rule is that a jury cannot be waived in felony cases. Some states now provide for the waiver of jury trial in cases not amounting to felony. Maryland has allowed trial by jury to be waived for all crimes since 1850. In actual practice trial by jury is extensively used. Over 90 per cent of all the cases tried in 1924 in the criminal court of Baltimore were tried by judges alone. In only 180 out of 4499 criminal trials was a jury asked for. In the county courts of that state more cases are being tried by judges than by juries. While most cases are heard by a single judge, two or three judges usually sit in capital cases.³⁵ Connecticut by act of 1921 also provided that in all criminal prosecutions the accused may, if he requests, be tried by the court rather than a jury. During the first four years that the law was in effect, about 70 per cent of the cases were tried by judges and 30 per cent by juries.³⁶

Two advantages would accrue from a greater use of waiver of jury in criminal cases. In the first place, it is believed that cases would come nearer being decided on the basis of merit—of guilt or innocence—than on the basis of emotional appeals. It should prove to be a blow at pettifoggers, ambulance-chasers, and shyster lawyers. Obviously much will depend upon the personnel of the bench. The need for the judge's removal from politics becomes greater if this added power is to be given to him. The second advantage of the plan would be the speeding up of cases. Thus in 1925, the criminal courts of Baltimore disposed of 92 per cent of the cases within three weeks of arrest. The advantage of this method of procedure has been summarized by a presiding judge of the Maryland Court of Appeals as follows: "The trials are usually less formal than trials before juries, and, of course, quicker. There is no delay in the selection of the tribunal, often opening statements are omitted as unnecessary, the evidence is more concise, and there are fewer objections or other interruptions."³⁷

³⁵ C. N. Callender, "Jury Trial in Criminal Cases," 125 *Annals of the American Academy of Political and Social Science* 106 (May, 1926); R. P. Shick, "Simplifying Procedure in the Lower Courts," 106 *ibid.* 112 (May, 1926); C. T. Bond, "The Maryland Practice of Trying Criminal Cases by Judges Alone Without Juries," 11 *American Bar Association Journal* 699 (1925); Alan Johnstone, Jr., "Suggestions for Reform in Criminal Procedure," 125 *Annals of the American Academy of Political and Social Science* 94 (May, 1926).

³⁶ W. H. Maltbie, "Criminal Trials Without a Jury in Connecticut," *Annual Report of Judicial Council of Massachusetts*, 1927, App.

While there is little to be said in defense of the petit jury, it should be noted that recent studies indicate that its importance in the breakdown of law enforcement has been overemphasized. It appears that it is becoming an institution of diminishing importance in the disposition of criminal cases. In New York City, Chicago, St. Louis, Kansas City, and Cincinnati, more than half of the persons arrested for felonies were eliminated in the preliminary stages; 10 to 12 per cent were eliminated by the grand jury (except in Missouri cities), and only 8 to 20 per cent were eliminated in the trial court.³⁸ "Defective an institution as the jury may be," states the Illinois Crime Survey, "it functions so seldom as an eliminating agency that it seems scarcely worth while to consider remedies for the evils supposed to be associated with it."³⁹

Right of Appeal

If the accused person is convicted, the right of appeal is still open to him. Appeal has been treated largely as a right rather than a privilege to be exercised only when reasons for review can be shown. This principle has been generally condemned by students of judicial administration.⁴⁰ Rather should the right of appeal be dependent upon the granting of permission by the higher court. Where the right is dependent upon errors committed by the lower court, it should be refused unless the alleged error can be reasonably supposed to have materially affected the decision.

Appeals and the subsequent reversals on technical grounds constitute a serious evil.⁴¹ Cases of reversal for petty technicalities which could not reasonably be supposed to affect the rights of the accused will be cited to show the absurd length to which appeal and reversal for procedural defects may be carried. A conviction in Delaware for stealing a "pair of boots" has been reversed where the evidence showed that the defendant did not steal two mates but that both were for the same foot. "The object of certainty in an indictment," said the court, "is to inform the defendant plainly

³⁸ Raymond Moley, *Politics and Criminal Prosecution*, p. 28.

³⁹ *Illinois Crime Survey*, p. 46. Also see Raymond Moley, *Our Criminal Courts*, chap. vii.

⁴⁰ See, for example, W. F. Willoughby, *op. cit.*, chap. xxxvii.

⁴¹ For interesting cases of reversal on technical grounds, see H. Hirschman, "Legal Cobwebs," 24 *American Mercury* 455 (Dec., 1931); *Illinois Crime Survey*, chap. ii.

and precisely of what offense he is charged. This certainty must be not merely to a common intent but to a certain intent in general, which requires that things shall be called by their right names."⁴² In Missouri, a conviction under an indictment charging a man with stealing hogs has been reversed where the evidence showed that the hogs were dead when taken. This must be done, said the court, since "the carcass of a hog, by whatever name called, is not a hog."⁴³ In an Illinois case one *Goldberg* was indicted on fifty counts and convicted under all of them. On appeal, however, the case was reversed and remanded because in the fiftieth count the prosecutor had written Holdberg instead of Goldberg. Although the court expressed itself as being "desirous that justice may be done to both parties in all cases," it felt compelled to reverse the judgment since "the forms and requirements of law must be regarded in the administration of justice."⁴⁴ Thus, regardless of the effect of the error—in this case a typographical error—or its lack of effect upon the decision, the case was reversed. These cases are illustrative of the practice of reversal for technical defects. When it is obvious that the defect could not reasonably be supposed to have materially affected the decision in the case, we are led to agree with the Oklahoma Criminal Court of Appeals that a technicality is "a microbe, which, having gotten into the law, gives justice the blind staggers."⁴⁵ In considering this problem, the Supreme Court of Wisconsin has said: "There is little wonder that laymen are sometimes heard to remark that justice is one thing and law another."⁴⁶

On appeal, the higher court may reverse the lower court, which means the case is ended. The usual procedure, however, is to reverse and remand, which means that it may be retried. The Illinois Crime Survey pointed out that of 136 cases from Cook County (Chicago) which were reversed and remanded, only nine defendants were reconvicted. One pleaded guilty to the offense charged and four pleaded guilty to lesser offenses. Thirteen were retried and acquitted. The charges against the others were dropped.

⁴² *State v. Harris*, 3 Carrington (Del.) 539.

⁴³ *State v. Heidrick*, 272 Mo. 502, 199 S. W. 192 (1917).

⁴⁴ *People v. Goldberg*, 287 Ill. 238, 122 N. E. 530 (1919).

⁴⁵ *Ryan v. State*, 8 Okla. Cr. Rep. 623, 129 Pac. 685 (1913).

⁴⁶ *Gist v. Johnson-Carey Co.*, 158 Wis. 188, 147 N. W. 1079 (1914). This was a civil rather than a criminal case.

In considering the reasons for this poor record of second convictions the report stated:

It should be remembered that a considerable period of time necessarily must elapse between the time of the first conviction and the second trial. It is a slow process to take a case to the Supreme Court, there to wait its turn for consideration, and after the decision to make its way back to the trial court, there further to encounter the delays incident to a new trial. In the meantime witnesses may have died, or left the jurisdiction. The evidence, too, has grown cold. The expense involved in the first trial is a material deterrent to setting the wheels in motion for another prosecution. If the evidence originally was obtained by a defective search warrant, a new trial is very nearly impossible, for the very evidence that was material in the first conviction cannot be used in the second. . . . The chances, thus, are greatly in favor of the defendant.⁴⁷

Regardless of the evidence of guilt, appeal with the reversal and new trial is to the advantage of the criminal. It is in a sense "stalling for time" in the knowledge that there is a decided advantage to be derived from such tactics.

It should be pointed out that this evil of appeals applies to civil as well as criminal cases. In civil cases, as pointed out by former Chief Justice William H. Taft, the right of appeals works to the advantage of the person with the longer purse. "The man whose all is involved in the decision of a lawsuit," he says, "is much prejudiced in a fight through the courts, if his opponent is able, by reason of his means, to prolong the litigation and keep him for years out of what really belongs to him. The wealthy defendant can almost always secure a compromise or yielding of lawful rights because of the necessities of the poor plaintiff."⁴⁸ The right of appeal, as Dr. Willoughby says, becomes merely "one of a number of devices employed by a litigant who has no real defense, to postpone meeting an obligation and if possible to tire out his antagonist, exhaust his financial resources, and force him either to abandon the action or accept an inequitable compromise."⁴⁹

⁴⁷ *Illinois Crime Survey*, p. 181.

⁴⁸ Quoted in W. F. Willoughby, *op. cit.*, p. 515.

⁴⁹ *Ibid.*, p. 514. It should be noted, however, that in some cases the courts have come in for criticism because of failure to reverse lower courts. The Mooney and the Sacco-Vanzetti cases may be cited as illustrations.

PROSECUTING ATTORNEY

The office of prosecuting attorney occupies an important place in the administration of justice in the American city. As was pointed out earlier in this chapter, the determination of whether prosecution shall be originated rests largely with him. Where grand juries are used, his advice is largely followed in returning or failing to return indictments. Their work is limited primarily to cases laid before them by the prosecuting attorney. Where prosecution by information has been substituted for indictment by the grand jury, his power in inaugurating prosecutions becomes even greater.

After the prosecution has been inaugurated, the success or failure depends upon the prosecuting attorney. If he is competent, prepares his case well, and prosecutes it with vigor, the chances of securing a conviction are great. On the other hand, if the case is poorly prepared and the prosecution half-hearted, the chances of conviction are small. His power to kill cases by asking for a *nolle pros.* makes him in effect judge and jury in many cases. It was pointed out in the Illinois Crime Survey that in a study of 7438 cases in which indictments were returned, over 16 per cent were eliminated by *nolle prosequi*, dismissed for want of prosecution, or stricken from the docket with leave to reinstate. The number of cases thus disposed of was considered excessive.⁵⁰

Another important power of the prosecuting attorney is that of bargaining with the defendant for a plea of guilty to a lesser offense than that charged in the indictment. A promise to recommend or agree to probation may be part of the bargain. In considering this power, the Illinois Crime Survey stated: "The practice of the state's attorney in *compromising with criminals* and agreeing to a reduction of the character of charges from a grave offense to a petty offense has become so prevalent in Cook County that the criminal population has become contemptuous of the law and fear of punishment is no longer a deterrent of crime."⁵¹ The same situation was found to exist in Missouri. The practice in that state was

⁵⁰ *Illinois Crime Survey*, pp. 43, 219. Also see *Criminal Justice in Cleveland*, p. 142; H. N. Fuller, *Criminal Justice in Virginia*, chap. iv.

⁵¹ *Illinois Crime Survey*, p. 326. Also see Raymond Moley, *Politics and Criminal Prosecution*, chap. viii.

summarized in the Missouri Crime Survey as follows: "The popular impression is that when an offender enters a plea of guilty he throws himself upon the 'mercy of the court.' As a practical proposition he does nothing of the kind. He has already thrown himself upon the mercy of, or struck a bargain with, the prosecutor, before he takes his plea. The court usually accepts the recommendation of the prosecutor as to the punishment on plea of guilty."⁵² When the prosecutor feels that he has a "weak case" and he is in doubt about the decision of a jury, he bargains with the defendant, agreeing to accept a plea of guilty to a lesser offense than that charged. Obviously, this procedure means less work for the prosecutor, and in some cases is probably due to his desire to avoid preparing the case for trial. It may also be due in part to his desire to have his record show a high percentage of convictions; this is a test often applied by the public to determine how successful a prosecuting attorney has been. For publicity and campaign purposes, a plea of guilty to a lesser offense counts as a conviction and is as valuable to the prosecutor as a conviction for the offense charged. By this procedure he avoids the risk of lowering his record of convictions by a petit jury acquittal.

The prosecutor is clearly one of the most important cogs in our machinery for the administration of justice. "The power of this official is practically unlimited in prosecuting and failing to prosecute criminal cases," states the Missouri Crime Survey. "The prosecutor is to the public a person who must prosecute all who fall into the toils of the criminal process. This conception is far from correct. In fact the prosecutor makes most of the decisions; he terminates most of the cases, and upon him falls the responsibility of freeing most of those who are charged with crime. Acquittals by juries and by direction of the court after trial are wholly insignificant compared with acquittals by the prosecutor before trial."⁵³ In its report on the state's attorney of Cook County, the Illinois Crime Survey pointed out that "eighteen persons are released by the action or through the influence of the state's attorney to one person released by the jury."⁵⁴

⁵² *Missouri Crime Survey*, p. 149.

⁵³ *Ibid.*, pp. 118-125.

⁵⁴ *Illinois Crime Survey*, p. 326.

The importance of the office would seem to call for a method of selection which would secure honesty, competency, and freedom from political control. Popular election is the usual method of selecting prosecuting attorneys. The result is that the office is political and the turnover heavy. The pay, tenure, and prestige of the office are such that a satisfactory type of personnel has not been attracted to it. As long as the office is elective, political considerations rather than efficiency and ability will be the determining factors in the selection of the incumbent. Appointment for a long period of years by state authority seems to offer the best means of improving the personnel of the prosecutor's office.⁵⁵ The ultimate goal might well be a department of justice in each state, of which the local prosecuting attorneys would be subordinate officers.

PUBLIC DEFENDER⁵⁶

Many persons are accused of crime and brought into court who are unable to pay for the services of an attorney to represent them. In such cases the judge assigns counsel for them. Approximately one-fourth of the states provide for compensation for assigned counsel in defending all such cases; about half of them provide for compensation in capital cases.⁵⁷ The result is that the poor have young and inexperienced attorneys assigned to defend them. In a sense these lawyers practice on the unfortunate persons who are unable to hire competent and experienced lawyers. Even though the court appoints able and experienced attorneys, they usually do not give adequate time to the case. People of financial means,

⁵⁵ See J. A. Fairlie and C. M. Kneier, *op. cit.*, pp. 251-254; W. F. Wiloughby, *op. cit.*, pp. 130-131.

⁵⁶ R. H. Smith, *op. cit.*, chaps. xiv-xv; M. C. Goldman, *The Public Defender*; W. J. Wood, "Necessity for Public Defender Established by Statistics," 7 *Jour. of Criminal Law and Criminology* 230 (July, 1916); J. B. Reynolds, "The Public Defender," 12 *ibid.* 499 (Feb., 1921); W. J. Wood, "The Office of Public Defender," 124 *Annals of the American Academy of Political and Social Science* 69 (Mar., 1926); R. H. Smith and J. S. Bradway, "Growth of Legal Aid Work in the United States," *Bulletin of U. S. Bureau of Labor Statistics*, No. 398 (1926); J. S. Bradway, "Notes on the Defender in Criminal Cases," 136 *Annals of the American Academy of Political and Social Science* 119 (Mar., 1928); E. R. Orfila, "Public Defender in the Police Courts," 136 *ibid.* 146 (Mar., 1928).

⁵⁷ Raymond Moley, *Our Criminal Courts*, p. 67.

on the other hand, employ able attorneys who present their cases more effectively than the prosecuting attorney. Under such a plan it can hardly be said that the state is securing just, fair, and impartial enforcement of the criminal law. The law assumes that an accused person is innocent until proved guilty. Yet we provide prosecuting attorneys to attempt to prove his guilt but have no comparable public officer to prove his innocence.

In order to furnish more competent legal assistance to those accused of crime who are unable to secure adequate legal service, the office of public defender has been established in a few communities. The plan originated in Los Angeles County in 1914. Under this plan, a public officer is provided to defend persons who are unable to secure the services of an attorney and for whom counsel will be assigned by the court. The movement has spread to other cities, among them Chicago, Memphis, Norfolk, Bridgeport, Hartford, New Haven, Minneapolis, Omaha, Los Angeles (both county and city), St. Louis, and San Francisco.⁵⁸ The method of selection of public defenders varies. The public defender of Los Angeles County is appointed by the board of supervisors after a competitive examination. In Minnesota and Connecticut he is appointed by the courts, and in Omaha he is popularly elected.

The public defender affords a more satisfactory method of defending the poor than the use of assigned counsel. In the larger cities, where the number of cases warrants, such an officer should be provided. The experience of cities using the plan shows that it is both more efficient and more economical than assigned counsel.

LEGAL AID BUREAUS

The poor are also often in need of, but unable to secure, legal advice and the services of an attorney in enforcing their civil rights. Although they were formerly forced to rely upon private organizations for such help, public legal aid bureaus have now been established in a few cities. Such cities have taken the view that providing courts for the enforcement or defense of rights is not sufficient.

⁵⁸ The Voluntary Defenders Committee in New York is a private agency. Through the courtesy of the municipal authorities it has been given an office in the Criminal Courts Building.

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Hence legal aid is furnished to those who are unable to secure it to enable them to enforce those right in the courts.⁵⁹

CONCLUSION

Adjudication may be looked upon as the final step in the governmental process. Policies may be wisely formulated, the law may be honestly enforced by the administrative branch, but all this can be defeated by a breakdown in the process of adjudication. If cases are "fixed" and the law is not fearlessly and impartially applied by the courts, the morale of administrators and of those in the administrative service (police, inspectors, etc.) will be lowered. They will look upon the situation as hopeless and become lax and indifferent in their work. While judicial administration is not a strictly municipal function in many cities, it is one in which everyone interested in city government must be concerned. It is in our cities that the courts receive their severest test. Progress has already been made in the improvement of our judicial system, but there are many points at which it is still deficient.

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Municipal Expenditures

Municipalities are incorporated, officers are elected, employees are hired, materials and supplies are purchased for the purpose of performing functions which are essential or at least desirable to make living under urban conditions tolerable. The municipality exists and the municipal government is maintained because the citizens feel the need of the services which are rendered. Streets need to be constructed and kept clean, policemen and firemen are needed to protect persons and property against lawbreakers and fire, health precautions must be taken against disease, and regulations must be provided and enforced in behalf of the general welfare, such as building codes, parking regulations, and zoning ordinances. Not only are there officers and employees to be selected and paid, but materials and supplies—fire trucks, police cars, street sweepers, etc.—must be bought to enable the public servant to provide the services for which the municipal government is established.

Municipal governments have been increasing the services rendered, both in number and in quality, and this has resulted in increased costs. The methods and procedures in spending public money—in buying services for the citizens—have greatly improved, so that today, to a greater extent than ever before, the citizen gets a dollar's worth of service for every tax dollar spent. Obviously, with over 16,000 municipalities in the United States, there is variation in the efficiency and economy with which public expenditures are made; hence the preceding statement should be taken as a generalization to which some exceptions must be made. Generally, however, the record is good; it is one of which city officials and employees can be proud, and for which citizens and taxpayers should be appreciative and grateful.

FINANCIAL ORGANIZATION IN CITIES

Until the present century little attention was given to financial organization in cities. There were several officers engaged in fiscal work, some elected and some appointed, but in most cases not only were they independent of each other but there was no adequate supervisory control in the chief executive. As pointed out by A. E. Buck, "City governments generally were without businesslike organizations to handle one of their most important major functions—the financing of their work."¹

The solution to this situation is to group all the officers having financial duties in a department of finance. In this department would be the comptroller, treasurer, budget officer, and purchasing agent.² And in the cities where municipal officials assess property for taxation and collect taxes, these functions would also be placed in the department of finance. A start was made in the organization of such a department with the introduction of the commission form of government with a department of finance headed by one of the commissioners. Another step forward was taken under the manager plan, because many manager charters provided for a department of finance whose head was selected by and responsible to the manager. The head of this department was given supervisory control over the financial operations of the city. He "became the manager's strong arm in directing the city's business."³ The advantage of centralizing all financial activities in one department having been demonstrated, the idea spread and has since been adopted in many mayor and council-governed cities. While great variation still exists, there has been a distinct tendency "in the direction of both the consolidation of the financial agencies and the centralization of power over their operation."⁴

Authorities in the field of municipal finance administration are generally agreed on the desirability of an integrated department of finance in which all the financial functions of the city are brought together in one department and placed under the control and

¹ A. E. Buck and others, *Municipal Finance*, p. 9.

² Thomas H. Reed, *Municipal Management*, chap. ix.

³ A. E. Buck and others, *op. cit.*, p. 9.

⁴ *Ibid.*, p. 17.

supervision of the chief executive. A. E. Buck, who has referred to such an organization as an "ideal system for administering city finances," points out that "experience shows that the establishment and operation of a unified department of finance greatly strengthens the general city administration and increases the effectiveness of executive authority and direction. Such a department tends to eliminate red tape in the handling of the city's business, to prevent losses through bad management and to curtail extravagant expenditures on the part of the operating departments of the city government."⁵ The department should be headed by a single individual selected by and responsible to the chief executive. All the financial functions of the city—accounting and reporting, current auditing, budget making, debt administration, custody of funds, assessment, levying and collection of taxes⁶ and other revenues, and purchasing—would be placed in this department. These might be grouped in the following divisions: (1) Control and Accounts, (2) Treasury, (3) Taxation and Other Revenues, (4) Budget, and (5) Purchases.⁷

MUNICIPAL ACCOUNTING

An adequate system of accounts is essential to effective municipal management.⁸ The chief executive wants to know at all times "how the city stands" financially—how much money has been received, spent, and is still available. As stated by the Municipal Finance Officers Association, "It is important that the chief executive know whether revenues are accruing as anticipated, whether collections are up to expectations, if departments are staying within their allotments and appropriations, and whether appropria-

⁵ *Ibid.*, pp. 17-18.

⁶ As was pointed out above, this may not be performed by the city but by the county or township.

⁷ Cf. Thomas H. Reed, *op. cit.*, chap. ix; Stuart A. MacCorkle, *Municipal Administration*, p. 185; A. E. Buck and others, *op. cit.*, p. 18. Buck recommends that the management of pension funds be placed in the department, and that personnel administration be closely related to the department in all cities, and actually be placed in it in small cities.

⁸ See Carl H. Chatters and Irving Tenner, *Municipal and Governmental Accounting* (1940); Detroit Bureau of Governmental Research, *Governmental Accounting as an Aid to Citizen Control of Government* (1940).

tions are outstripping revenues. . . . He should also know whether the municipality's indebtedness is being paid off as anticipated and whether the debt is growing or declining."⁹ This is done by keeping up-to-date records to show obligations incurred or money spent.

Although the practice varies, most authorities consider that cities should operate on an accrual basis rather than a cash basis. The executive wants to know the obligations that have been incurred and that must later be paid. It is the unencumbered balance rather than the unspent balance on which he must operate. In the case of revenues, however, he wants to know what taxes and revenues not only are due but are actually being received. Even though they are due, if they are not being collected, the administration is headed for difficulties. Many cities operate under a system in which revenues are accounted for on a cash basis, and expenditures on an accrual basis.¹⁰

The National Committee on Municipal Accounting recommends that so far as practicable the accrual basis of accounting be adopted.¹¹ Carl H. Chatters, former executive director of the Municipal Finance Officers Association, also favors this method, stating that "it is apparent that a strict budgetary control can be exercised only when expenditures are recorded on the so-called accrual basis."¹²

MUNICIPAL BUDGETS

A municipal budget is a plan of what the city proposes to do in the following year and how it will be financed; in brief, it is a

⁹ *Standard Practice in Municipal Accounting and Financial Procedure* (Accounting Publication No. 10), p. 15.

¹⁰ On the desirability of having revenues accounted for on a cash basis, see Frederick L. Bird, "Current Trends in Municipal Finance," 26 *Nat. Mun. Rev.* 467 (Oct., 1937).

¹¹ Municipal Finance Officers Association, *Standard Practice in Municipal Accounting and Financial Procedure* (1943), p. 6. In 1934 the National Committee on Municipal Accounting was organized, bringing together representatives of national professional accounting societies, several national public officials' organizations, and the National Municipal League. The committee has taken the leadership in bringing about better municipal accounting. See 26 *Nat. Mun. Rev.* 291 (June, 1937).

¹² Carl H. Chatters, "Financial and Accounting Standards," 26 *Nat. Mun. Rev.* 291 (June, 1937). For the use of the cash basis principle, see Arnold Frye, "New Jersey's Experience with Cash Basis Budgets," 26 *ibid.* 578 (Dec., 1937).

plan of revenues and expenditures for the fiscal year. The most important objective of the budget is to see that income and expenditures of the city balance; as A. E. Buck has put it, "To make both ends meet is the main purpose of the budget."¹³

The mayor or manager is usually responsible for the preparation of the budget. In some cities, however, as in Chicago, the budget is made by the legislative body itself, acting through its finance committee. And in some cities it is made by the comptroller.¹⁴ It is generally agreed that the mayor or manager should be responsible for preparing the budget for submission to the council.¹⁵ In smaller cities the chief executive may do this personally, but in larger cities he has the assistance of the director of finance or a budget director. Several large cities now have a full-time budget director to assist the chief executive in this important duty. Among the cities having an official with the title of budget officer, director of budget, or some similar title are New York, Detroit, Los Angeles, Baltimore, St. Louis, Boston, Pittsburgh, San Francisco, Buffalo, Seattle, Louisville, and Toledo.¹⁶ Among the cities which do not have a separate budget bureau or budget director but have placed this work in the department of finance are Cincinnati, Kansas City, Rochester (N. Y.), Toledo, Cleveland, Portland (Ore.), and Louisville. As was pointed out above, in Chicago the budget is made by the finance committee of the council.

In preparing the budget for submission to the council, the chief executive and his budget-making agency need to show courage and good judgment. A budget which is merely a compilation of departmental requests or estimates of need is not worthy of the name. Each department head is interested in the work of his department and wants to see it expanded and developed, probably because he believes it good policy, but also because it enhances the importance of his position. Someone must take an over-all view of the city's service needs and tax resources, and this is the task of the person who prepares the budget. The various spending agencies argue for

¹³ A. E. Buck and others, *op. cit.*, p. 33.

¹⁴ In Detroit, Baltimore, and St. Louis, the budget director is appointed by the comptroller. Norman N. Gill, "Big City Budget Methods," 32 *Nat. Mun. Rev.* 291 (June, 1943).

¹⁵ Except in commission-governed cities.

¹⁶ Norman N. Gill, *op. cit.*

and present with emphasis the importance of their particular work—whether it be police, fire, health, or recreation—and the need of expanding and improving their services. All may be meritorious requests, but the budget maker must also think of where and in what amounts the money is coming from. He knows there is a limit to what the people are willing and can reasonably be asked to pay in taxes. He must be ready to say no to requests and pressures from spending agencies, and do it on the basis of the respective merits rather than on the amount of insistence from department heads.¹⁷ Finally, he must be realistic as to anticipated revenues and not prove too optimistic about what the various proposed sources will produce. The person who has this over-all view of the city's ability to pay and of the service needs as represented by the various departments is the mayor or manager. It should be his responsibility, or that of his staff agency charged with this duty, to revise the budget estimates of the department heads.

The budget is presented to the council in the budget document. The details in the budget document vary, but "it is essential that the document include information which will aid this body in its study of the budget and in its determination of the appropriation and revenue policies. This means that the budget document must necessarily contain more than just the bare estimates of expenditures and revenues."¹⁸ Items which the Municipal Finance Officers Association recommends be included in the budget document are: a budget message by the executive; a budget summary showing estimated revenues and expenditures on one page; a budget summary showing resources and expenditures for the current year and each of two preceding years, and estimates for the coming year; a schedule showing revenues from each source for the current year and each of two preceding years, and estimated revenues from all sources for the coming year; a schedule of fixed and uncontrollable expenditures for the coming year; departmental schedules showing expenditures for the past two years, estimates for the current year, departmental requests and amounts recommended by the executive for the coming year; departmental work programs; fund balance

¹⁷ See Mabel L. Walker, *Municipal Expenditures*, chap. i.

¹⁸ Municipal Finance Officers Association, *Municipal Budget Procedure and Budgetary Accounting* (1942), p. 30.

sheets as of the close of the current fiscal year; a statement showing the actual cash balance at the beginning and end of the two preceding years, and the estimated balance for the current and coming year; a debt statement and a debt schedule; an analysis of tax and special assessment delinquency; a schedule of short-term borrowing during the past two years, the current year, and any proposed for the coming year; appropriation and tax levying ordinances to carry out the budget; and a schedule of salary and wage rates applicable to each class of position.¹⁹ It may be seen from this that the budget should provide the information needed by the council to act intelligently in providing a fiscal program for the city for the following year.

In presenting the budget to the council the executive usually accompanies it with a budget message. This is a brief statement explaining the general policies which have been followed, significant changes from the previous year and the reasons therefor, and the tax rate which will be necessary to support the proposed expenditures. The budget message should be effective not only in explaining but in selling the proposed budget to the council and the public.

The usual practice is for the council to refer the budget to the finance committee, which then proceeds to hold hearings at which interested persons appear. These hearings are in most cases perfunctory, but in some cities representatives of citizen organizations appear and oppose certain proposals, on either the expenditure or the revenue side. The opportunity given citizens to appear keeps the budget maker on guard to avoid being vulnerable to justifiable criticism, and it gives the citizen a feeling of satisfaction with the democratic process by which taxes are levied for the support of government. Several cities have attempted to stimulate interest in the budget hearings, to attract more persons, and to secure greater public discussion. Unfortunately these efforts have not been too successful. The organization of citizen groups, especially taxpayers' associations, has in some cities led to greater interest in the budget hearing.

Generally the council has complete freedom to change the budget submitted to it as it sees fit. It may increase or reduce items, add

¹⁹ *Ibid.*, pp. 30-31.

new ones or omit entirely those proposed. And it may use its own judgment as to tax rates and proposed sources of revenue. This practice is still generally followed in council-manager cities. In several mayor and council-governed cities, severe limitations have now been placed on the council's power to change the budget submitted by the executive. Under one type of limitation the council may reduce but cannot increase items in the mayor's budget. Under another, changes may be made only by an extraordinary vote of the council, such as a two-thirds or three-fourths vote. The object of such limitations is to protect the balanced budget of the executive against council changes unless the logic of the case clearly demands such changes. It is a means of giving the budget as submitted, which should and usually does represent much labor, the benefit of the doubt when the legislature proposes changes.

State control over local budgets is now provided in several states. In his study, *State Supervision of Local Finance*, Wylie Kilpatrick said that 38 states require the preparation of budgets by all or some of their local governments, and that of these, 35 prepare budget forms for use by some or all local units.²⁰ Some states provide for a review of the budget by a state agency to see that it complies with the statutes or the regulations of that agency. The object is to review the budget as to legality. Other states review the budget as to the purposes and amounts for which money is being spent. Illustrative of this type of control is Indiana, where, on petition of ten taxpayers, a state administrative agency has power to reduce local budgetary items and tax levies. A similar plan was adopted in Iowa in 1937.²¹

Final action on the budget is taken by the council in the form of ordinances. They may be drafted by the council but in many cases they are drafted by the budget-making authority and submitted to the council with the budget document. Usually there are three separate ordinances—appropriation, revenue, and borrowing—to carry out the budget submitted to the council.

A question which arises is whether appropriations should be segregated or made in lump sums. The budget document should be detailed and items of expenditure segregated so that the council

²⁰ Wylie Kilpatrick, *State Supervision of Local Finance*, chap. v.

²¹ For the merits and demerits of state administrative control, see chap. vii.

may see how the totals have been arrived at and just what activities, services, and functions are planned. The appropriation ordinance, however, should not be itemized in detail, but lump sums should be made available to spending agencies. Through his finance department and the use of the current audit the executive should then be responsible for the spending of the money. The post-audit rather than the segregated appropriation plan should be relied upon by the council as its check. The lump-sum appropriation plan gives the executive the necessary flexibility in using the money made available to him by the council.

ENFORCEMENT OF THE BUDGET

After the budget has been approved by the council and enacted by ordinance, it becomes the responsibility of the executive to carry it out. Taxes and other revenues must be checked as they are collected, and expenditures must be audited to see that they conform to the budget.²²

Mayors and managers have found a work program and allotment system useful in carrying out a budget.²³ On the basis of a work program prepared by the department head and approved by the mayor or manager, the lump sum appropriated to a department or spending agency is made available on some periodic basis, usually on a quarterly plan. The comptroller is informed of the amount available for the quarter, and by the current audit the department is required to adhere to the amount allotted. A reserve is usually held from the lump sum appropriated to the department to take care of emergencies, and the work plan and allotments may be revised at regular periods.²⁴ This plan is valuable in periods when expenditures and revenues are both uncertain and unpredictable, as

²² A. E. Buck and others, *op. cit.*, p. 101.

²³ Carl H. Chatters states that "the control of expenditures is best carried on in larger cities through the use of an allotment scheme. This provides for careful estimates, by months or by quarterly periods, of both revenues and expenditures and the adjustment of the spending program if revenues fail to materialize or spending goes on more rapidly than estimated." 26 *Nat. Mun. Rev.* 292 (June, 1937). Also see John F. Willmott, "Work Programs and Municipal Budgets," 27 *Pub. Management* 264 (Sept., 1945); A. E. Fuller, "Making Wartime City Budgets," 24 *ibid.* 201 (July, 1942).

²⁴ A. E. Buck and others, *op. cit.*, pp. 104-108.

during depressions or wars. Some cities have used an allotment plan without a work plan, but this is less satisfactory because it does not take care of seasonal fluctuations in departmental needs. The money available for snow removal, for care and maintenance of parks, for recreation, etc., cannot be divided into twelve equal parts. A plan which makes one-twelfth of the appropriation available each month does not give the desired flexibility.

In the making of expenditures, the comptroller, who makes the current audit (also referred to as the pre-audit, the continuous or running audit, and the administrative audit), plays an important part. In the appropriation ordinance the council determines the amounts and purposes for which money will be spent. The comptroller then issues or signs warrants where he finds that an obligation has been legally incurred and that money has been appropriated by the council for this purpose and not yet spent. If the city operates under a work program and allotment plan, he sees that the expenditure is within the amount made available to the department by the chief executive for the period in which payment is being made. On the basis of the warrant, payment is made by the treasurer from the city funds which he controls. Until the comptroller signs the warrant, and in effect says that the person is entitled to his money, no payment is made by the treasurer.

In some cities, the comptroller in performing the function of current audit looks only into the legality of expenditures. He merely ascertains if the department head has approved the claim and if money is available to pay it. A. E. Buck points out that under such a procedure the comptroller "still does not know if the approval of the department head was purely perfunctory, if the city actually received what it is asked to pay for, if the prices charged were in accordance with the purchase agreement, or if payrolls were 'padded.'"²⁵ He suggests that the facts to be established in the audit of transactions go beyond mere legality. Thus he suggests that the following facts be determined about transactions resulting in expenditures for personal services: (1) Are the payees actually employed by the city? (2) Are they employed in accordance with civil service or other employment regulations? (3) Did the employee actually work during the period so that he is entitled to the

²⁵ *Ibid.*, p. 112.

amount proposed? (4) Is the rate which he is paid authorized by salary or wage regulations? In the case of the purchase of supplies and materials, Buck suggests that before authorizing payment the comptroller should assure himself that, as to both quantity and quality, the city received what it is paying for, and that, as to amount, the payment is in accordance with the terms of the purchase order.²⁶ The Municipal Finance Officers Association, in considering the current audit, has taken the position that "before approving a bill for payment, the chief financial officer must determine that the commodities have actually been received or the services actually performed, that such commodities and services are in accordance with specifications, that the prices charged are fair and those agreed upon, that the expenditure is legal and will be charged against the proper appropriation, and that it is not in excess of such appropriation."²⁷ Whether the comptroller merely looks into the legality of the claim or scrutinizes it in the way proposed by Buck and the Municipal Finance Officers Association, he further assures himself that the claim has not previously been paid, that the money has been appropriated for the purpose, that a sufficient amount remains to cover the claim, and that it is for a purpose authorized by the council.

The treasurer is the custodian of city funds. The office is still elective in many cities, but there has been a tendency in recent years to put it on an appointive basis. Where there is an integrated department of finance, the treasurer is merely the head of one of the divisions of that department. The office is not policy determining and there is no reason why it should be elective.

Taxes, fees, and other revenues, as well as grants from the state or shared taxes, are entrusted to the custody of the treasurer to be paid out for obligations incurred in the operation of the city departments—the payment of salaries and the purchase of supplies and materials. The treasurer does not use his discretion in determining whether money ought to be paid out by the city. As was said above, payment is made on the basis of approval by the comptroller.

²⁶ *Ibid.*, pp. 114-115.

²⁷ Municipal Finance Officers Association, *Standard Practice in Municipal Accounting and Financial Procedure* (1943), p. 13.

CUSTODY OF FUNDS

In considering the work of the treasurer, reference should be made to the custody of city funds. Other than small amounts needed for daily operations, the funds of the city are deposited in banks. In selecting depositories, the city needs to look into the security furnished and the rate of interest paid on the funds deposited. Formerly the treasurer was liable for the security of funds, and in return he was given the privilege of taking for his personal use any interest earned. The most general practice today is for the bank or banks in which municipal funds are deposited to be selected by the council or by an ex officio board of which the treasurer is a member. The treasurer, under this plan, is not held liable for the loss of funds deposited in banks, and all interest earned is for the benefit of the city. A system of competitive bidding by banks for public funds is sometimes used to eliminate political favoritism and secure higher interest rates on funds deposited. Martin L. Faust in his study, *The Security of Public Deposits*, has stated that "safety of deposits should always be given precedence over high interest earnings."²⁸ He considers the requiring of a pledge of collateral security for funds deposited as the most satisfactory plan for protecting the government against loss of funds in case of bank failures.

INDEPENDENT OR POST-AUDIT

The independent or post-audit is another step in the financial procedure used in cities.²⁹ The post-audit may be performed by a municipal officer or department, usually the auditor, by a firm of

²⁸ Martin L. Faust, *The Security of Public Deposits* (1936). Also see his *The Custody of State Funds* (1925).

²⁹ As stated by the Municipal Finance Officers Association, "The object of an independent post-audit is to verify the financial condition of the municipality at the close of the fiscal period; to determine what the revenues of the municipality have been for the period; to determine whether expenditures have been made in accordance with law; the detection and prevention of fraud; and the detection of errors in principle or in calculation." *Standard Practice in Municipal Accounting and Financial Procedure*, p. 24. On the post-audit in state government, see Vera Briscoe, "Guarding the States' Money," 35 *Nat. Mun. Rev.* 233 (May, 1946).

public accountants hired by the city for this purpose, or by a state agency. This audit is made after transactions have been completed, usually at the end of the fiscal year. Whereas the pre-audit is primarily an executive device, a means of administrative management, the post-audit is used chiefly as a means by which the council may require the executive branch to account for funds entrusted to it. Where the post-audit is made by a permanent official, it is a continuous process instead of being performed at the end of the fiscal period. It is, however, made after the financial transaction has been completed. Where the post-audit is made by a municipal department or officer (usually the auditor), the auditing agency should, as the Municipal Finance Officers Association says, "report and be directly responsible to the legislative body of the municipality or should be headed by an official elected by the voters. In some cases transactions are post-audited by a municipal department responsible to the chief executive of the municipality. Such an audit is a post-audit but it is not an independent post-audit."³⁰

The post-audit may also be made by an outside firm of accountants hired by the city for this purpose. In this case it is performed at the end of the fiscal year, and a report is made to the council of its findings.

In several states, a state agency either supervises the auditing or actually audits the accounts of municipalities.³¹ Where field or traveling auditors from the state agency actually do the auditing, the practice varies as to the method of paying for the audits. In some states, payment is entirely by the state, in some the entire amount is paid by the city, and in others payment is shared by the state and the city. Wylie Kilpatrick has pointed out that appropriations to state agencies have been so restricted that they have been unable to make regular audits of all cities. The intervals between audits have been too long and audits have been made at late dates. He favors the combining of state auditing and state supervision of private auditors. The state would thus "maintain at least a small examining staff available for state examinations at local request, or in event the local unit fails to comply with the requirement that

³⁰ Municipal Finance Officers Association, *Standard Practice in Municipal Accounting and Financial Procedure* (1943), p. 2.

³¹ See chap. vii.

an audit be made. If unusual, emergency, or suspicious circumstances make advisable a state rather than a private examination, the reserved right of the state audit can be exercised."³²

MUNICIPAL PURCHASING

Cities must purchase many different types and kinds of supplies and materials in order to perform their functions and to deliver to the citizens the services they desire. Fire trucks, police cars and motorcycles, coal, shovels, office furniture, medical supplies, stationery, and brooms are illustrative. It is a combination of manpower and matériel which results in good municipal services.

The more progressive cities have found that by establishing centralized purchasing they have been able to improve the quality of goods purchased and to lower their cost.³³ Obviously a saving results from large-scale purchases made by one central office, rather than small-scale purchases by each separate department. And the use of centralized purchasing enables the city to have someone trained and experienced in purchasing in charge of this work. Centralized purchasing has resulted in more exact specifications regarding the quality of goods purchased, and in better inspection methods to see that the quality specified is actually received.

The chief objection to centralized purchasing has come from the heads of operating departments and agencies who feel that too much red tape is involved in securing supplies, that there is delay, and that in some cases the purchasing agent is dictatorial as to the particular items to be purchased. They feel they know the specific grade or quality and the trade-name product they want, regardless of cost, and they do not want another which the purchasing agent says is cheaper and "just as good." Purchasing agents should not lose sight of the fact that they are to assist and serve operating officers; and the latter should appreciate that there is a special competence involved in purchasing supplies and welcome the aid of the purchasing agent. Both should remember that they are serv-

³² Wylie Kilpatrick, *op. cit.*, pp. 13-17.

³³ On centralized purchasing see Russell Forbes, *Governmental Purchasing* (1929); also his *Purchasing for Small Cities* (1939); A. E. Buck and others, *op. cit.*, chap. ix.

ing the public and that by their cooperation the taxpayer's dollar can be made to buy more of the needed supplies. Experience has demonstrated that the economies resulting from centralized purchasing more than justify the maintenance of such an office.

The purchasing agency may be a division in the department of finance. Where finance activities have been integrated in one department, it is preferable that the purchasing department also be placed here. In some cities, however, the purchasing department is independent of other departments and immediately responsible to the mayor or manager.

Regardless of the organization, the position of purchasing agent is one of great responsibility, and the person selected should have training and experience which qualify him to see that the city secures supplies and materials at the most favorable prices. Centralized purchasing offers a means of avoiding inefficiency, waste, and graft; and under a competent officer experience has demonstrated its unquestioned merit as a means of securing supplies and materials for the city.

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Municipal Revenues

As pointed out in the preceding chapter, cities are organized and municipal governments are maintained for the purpose of rendering services to people living under urban conditions. Cities are means to an end, the object being to provide more suitable conditions under which to live and work. Municipal services must be paid for, and this is done through taxes and other revenues collected by the city. This chapter will be devoted to a discussion of the sources from which cities derive the money necessary to provide the various municipal services.¹

GENERAL PROPERTY TAX

The chief source of municipal revenue is some form of a property tax, most commonly a general property tax. The general property tax is a levy upon all types of property, a uniform rate being applied so that the amount contributed by each citizen depends upon the property he owns and reports for tax purposes. The tax is not based on the principle of ability to pay and is criticized for this reason. Ownership of property is not the best criterion of the ability to support government.

The general property tax has proved difficult to administer; this results in inequities and injustices as between taxpayers. The chief obstacle to its administration is in determining the value of property.

¹ Statistical data on municipal revenues have not been included in this discussion because the amounts collected and spent change each year. For these data, consult *Municipal Year Book*, published annually by the International City Managers' Association. Also see *City Finances: 1944* (Government Printing Office, 1946); *Governmental Finances in the United States: 1942* (Government Printing Office, 1945).

Assessors find difficulty in determining, as the law requires, the "full value," "fair value," "cash value," or "market value" of factories, mercantile establishments, office buildings, homes, vacant lots, furniture and equipment in business buildings, and household goods in homes. An enumeration of some of the types of property indicates the difficulty in a city of 25,000 population; and as cities increase in size the difficulty becomes greater. Because of the complexity of the problem, A. E. Buck has stated that "the general property tax in the states where it still exists in its original all-inclusive form is a legal fiction and not a fact."²

In the field of intangible property, the problem of valuation for assessment purposes has been one primarily of uncovering the property; stocks, bonds, and other evidence of debt are not reported and assessors have not been successful in placing them on the tax rolls. Intangibles can be "hidden," and many property owners do so. In states having a general property tax, the owner who reports all his intangibles is an exception. An attempt has been made in some states to get owners of intangibles to report them for taxation by placing a lower rate on such property. It is in effect an attempt to bribe the owners to report such property for taxation. It is also a recognition of the general practice of undervaluing tangible property for purposes of taxation.

The assessor who makes up the assessment rolls and determines the value of property for purposes of taxation is usually elected. This has meant that ability to get votes, rather than any special competence in valuing property, has been the determining factor in his selection. Favoritism toward the right people and leniency in general are often more important, in securing the reelection of an assessor, than doing a good job. In fact, locally elected assessors have found that it does not pay to hew to the line and let the chips fall where they may. It may be good assessment administration but it is not good politics.

The National Association of Assessing Officers points out that there is "no necessary correlation between ability to secure votes and ability to run an assessment department" and recommends that assessors be appointed to office rather than elected. The Association favors appointment by the local chief executive, rather than by either the state tax department or the local legislature. "Political

² A. E. Buck and others, *Municipal Finance*, p. 315.

interference with the assessor's work will probably be less where the chief executive makes the appointment, and coordination with the work of other departments of government is certain to be better."³ Removing the local residence requirement and putting the office under the merit system are two steps which have been taken in a few cities, and both are to be commended.⁴

Property owners may, either directly, or indirectly through local political leaders, exert influence on assessors to have a low valuation placed on their property so that the amount of taxes they pay can be kept low. The result has been general undervaluation from which the property owner gains nothing. A higher tax rate is needed to secure the necessary revenues than if all property were given a true value. Property owners know of this general undervaluation, but each one hopes for and seeks to secure a greater individual undervaluation than others receive.

The primary difficulty in the valuation of property for assessment purposes has not been willful undervaluation. Rather it has been the difficulty of the task imposed upon locally elected officers who by training and experience are not able to cope with it. Efforts have been made, especially in the larger cities, to improve the method of valuing property for assessment purposes by using tax maps and determining unit values, and applying these to individual properties. This method is often referred to as the "mechanical" or "scientific" valuation of real estate. In the case of land, a unit value is assigned to a foot of frontage or to a square foot in the middle of a block. With the use of this unit value, the assessment of property then becomes merely a matter of mathematical determination. Variation is provided for corner lots, which are given a higher value, and for lots which differ in depth, since the shape of the lot and the proximity of the total area to the street are important factors in determining values.⁵

This principle of scientific or mechanical valuation may also be applied to buildings and is used in several cities. Buildings are divided into several classes on the basis of the type of construction and the use to which the building is devoted. A square foot or

³ National Association of Assessing Officers, *Assessment Organization and Personnel*, p. 185.

⁴ See *Municipal Year Book*, 1944, p. 242.

⁵ A. E. Buck and others, *op. cit.*, pp. 344 ff., 370-371.

cubic foot value is then determined for each class of buildings, and the assessor applies this unit value to each individual structure. The unit value is the cost to reproduce; hence provision must be made for depreciation and economic obsolescence in the case of each building. Formulas are provided for the assessor in determining this amount, which is subtracted from the cost to reproduce so as to arrive at the present assessed value.

The principle of determining and applying unit values to individual properties has been generally approved. The first problem is to arrive at a fair unit value. Special attention can be given to this and expert assistance is available. Data on sales and rentals are especially useful in arriving at unit values. The application of unit values to individual properties offers less chance of and opportunity for favoritism. And it provides a means by which the "fair value" can be more closely approximated than when this is left to the unguided judgment of the assessor.

State supervision, control, and guidance and assistance by tax commissions or similar agencies offer a means of improving local assessment administration. The National Association of Assessing Officers reports that in only two states is there no state supervision of local assessors; and in five others, state agencies have only limited supervisory powers. It lists the following as the supervisory activities carried on by state agencies: advising assessors, calling group meetings of assessors, construing tax laws, requiring reports, visiting local offices, issuing rules and regulations, prescribing forms, enforcing penalties, removing local assessors from office, assessing omitted property, and reconvening local boards of review.⁶ The Association favors state supervision of local assessors but takes the view that the "more drastic enforcement measures," such as removal of local assessors and issuance of reassessment orders, should be resorted to only when requested by local authorities or by a substantial body of taxpayers.

TAX EXEMPTIONS

Tax exemptions have become an increasing problem in connection with the property tax. The Council of State Governments reports

⁶ National Association of Assessing Officers, *op. cit.*, pp. 328-329.

that tax exemptions have removed almost one-sixth of the assessable real estate from the tax rolls.⁷ This means that the tax burden on property that is on the tax rolls is heavier. Among the exemptions are federally owned property, homesteads, housing projects, exemptions to attract industries, and those on property owned by religious, charitable, and educational institutions. The percentage of exempt property has increased, partly as a result of the addition of new categories, such as property owned by veterans and veteran organizations, and partly by the increase in the amount of property in the old categories, such as federally owned property.⁸ Property owners have come to realize that they are paying added taxes to furnish municipal services on exempt property. A tax-exempt homestead, industry, housing project, or federal property still requires fire and police protection and other municipal services. Cities are beginning to question the justice and wisdom of the principle of tax exemption, or at least the lengths to which it has been carried. Much of it is based on state constitutional or statutory provision and its elimination will be a slow and difficult process.

PROPOSED TAX ON OCCUPANTS

In 1942, a Special Committee on Intergovernmental Fiscal Relations appointed by the Secretary of the Treasury recommended an occupancy tax to be used either as a replacement of or a supplement to the general property tax.⁹ The proposal was based largely on the principle that market value is not a good measure of taxpaying ability. Another advantage is that such a tax would bring home to more persons the cost of government, and the fact that governmental services require revenues.

The Committee pointed out that the proposal would lead to some administrative problems. If the rental tax was only supplementary,

⁷ Quoted in 35 *Nat. Mun. Rev.* 381 (July, 1946). Also see Stuart A. MacCorkle, "Tax-Exempt Property Poses Problem for Texas Cities," 28 *ibid.* 527 (July, 1939).

⁸ On federal payments in lieu of taxes, see chap. viii.

⁹ *Federal, State, and Local Government Fiscal Relations* (1943), pp. 409-410; Arthur Collins, "Occupancy Taxes in Britain," 33 *Nat. Mun. Rev.* 170 (Apr., 1944); Clarence Heer, Herbert D. Simpson, and others, "Shall U. S. Use Occupancy Tax?" 33 *ibid.* 325 (July, 1944).

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it would make two valuations necessary—a rental as well as a capital value. Occupiers move more frequently than owners, so problems of migration would arise. The problem of cyclical fluctuations in city revenues would also be accentuated because rents fluctuate more than capital values. Despite these objections, the Committee was of the opinion that an occupancy or rental tax has “possibilities that may well be explored.”

STATE CONTROL OF TAX LIMITS

After the total value of the property in the city subject to taxation has been determined, and the amount of money necessary to be raised by the general property tax has been decided upon, the tax rate is fixed. This is the rate which, when applied to all the property on the tax rolls, will raise the amount of money required. In 40 states, however, there is a limit upon the municipal tax rate, fixed by either state constitutional or statutory provision.¹⁰

State tax limits have proved unsatisfactory in that they are rigid and inflexible and do not vary with local needs. They are unsatisfactory even when applied to cities in the same population group, since the financial needs will vary depending upon whether the city is a suburb of a metropolis or an independent city, residential or industrial, and many other factors.

The number of local governments is such that a tax limitation which is sufficiently liberal to take care of the possible needs of all of them gives little protection to the taxpayer. The total amount levied on his property by the various units may be very burdensome, even though each stays within the maximum tax limit. To meet this problem, blanket or over-all tax limitations have been imposed on local governments in some states. This puts a total limit on the amount of taxes that can be levied on a particular piece of property. Some means must then be provided to allocate or apportion this amount among the various taxing units on the basis of their needs. This is done in some states by statute, and in others a local administrative board is provided for this purpose.

¹⁰ A. M. Hillhouse and Ronald B. Welch, *Tax Limits Appraised* (1937). Rodney L. Mott and W. O. Suiter, “The Type and Extent of Tax Limitations,” in Glenn Leet and R. M. Paige, *Property Tax Limitation Laws* (1936), classify the various tax limitation provisions.

Tax limitation of local governments by the state have not proved satisfactory and should be condemned.¹¹ As stated by the Special Committee on Intergovernmental Fiscal Relations of the Treasury Department, "Rate limitations offer no constructive solution to the problem of financing local government or improving the property tax."¹² According to another study, "The tax limitation movement is essentially a blind revolt of an articulate group of property owners and real estate operators aimed at a single objective—relief from real estate taxes at any cost. Some proponents are well intentioned, but their proposal is destructive rather than constructive and is opposed to the best interests of a majority of citizens."¹³ If the people in our cities are not competent and able to determine through their governmental machinery the amount of money they want their municipal governments to raise by taxation and spend, then local government would appear to be a failure.

As forced economy, state tax limitation laws have not accomplished their goal since they limit only property tax levies, but are not spending limits. Resort can be had to other sources of revenue, often less desirable than the property tax. Tax limits have in some cases led to bonding or temporary loans to meet current expenditures. Finally, forced reductions in expenditures have curtailed needed services in many cases. Poverty on the part of cities resulting from tax limitation laws has not resulted in improved efficiency.¹⁴

DELINQUENT TAXES

Tax delinquency often becomes a serious problem for governments which rely on the property tax, especially in periods of depression. Some taxpayers find that they are financially unable to pay their taxes in certain years. The property has value but it earns no income, and the owner has no other income from which to pay the taxes. He counts on the income from the property to pay the taxes, but because of economic conditions over which he has no control the income is inadequate. In a sense, this type of delinquency is a result

¹¹ James W. Martin, "Tax Limitation—A Dangerous Device," 28 *Nat. Mun. Rev.* 640 (Sept., 1939).

¹² *Federal, State, and Local Government Fiscal Relations*, p. 411.

¹³ A. M. Hillhouse and Ronald B. Welch, *op. cit.*, p. 1.

¹⁴ Glenn Leet and R. M. Paige, *op. cit.*, p. 71.

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of the fact that the property tax is not levied in proportion to ability to pay. Some tax delinquency is the result of poor administration, the absence of effective means of enforcing penalties for non-payment. This appears especially in periods of depression; taxpayers hope that legislative bodies will later forgive a part or all of their tax arrears. Past experience indicates that such hopes may not be without foundation.

Various means have been used to meet the problems arising from the non-payment of taxes when due, and the consequent shortage of funds for public services. One is the installment payment of taxes, usually in quarterly payments, rather than in one lump sum each year. Another is the giving of a small discount for the payment of taxes prior to the time they are due.¹⁵ Educational campaigns to convince the taxpayers of the desirability and necessity of paying their taxes and the futility of hoping for a waiver of back taxes have been used. Vigorous enforcement of the laws and impartial application of penalties will bring home to taxpayers the futility of resorting to tax delinquency in the hope that the legislature will play Santa Claus and forgive either back taxes or penalties.

OTHER SOURCES OF REVENUE

In addition to the property tax, which is the chief source of municipal revenue, other sources are available to and used by cities.¹⁶ The licensing power is made use of by cities, both as a source of revenue and as a means of control. In some cases the license is used primarily as a means of control, the fee being small, and generally limited to a sum sufficient to cover the cost of administration. In other cases the purpose is largely fiscal or to secure revenue, and the fees are larger. The two purposes are not mutually exclusive and both may be involved. A high license fee for liquor establishments may reduce the number of places to be supervised and thus simplify the problem of law enforcement; and it may also return a significant amount of revenue. Vehicle license taxes are levied by cities in some states.

¹⁵ See Carl H. Chatters and A. M. Hillhouse, *Local Government Debt Administration*, pp. 169-170.

¹⁶ The authoritative study on sources of revenue for cities, other than the property tax, is A. M. Hillhouse and Muriel Magelssen, *Where Cities Get Their Money*, Municipal Finance Officers Association, 1945.

This is directed at motor vehicles primarily but in a few cases covers other means of conveyance, including bicycles. The licensing of business generally has been adopted by some cities, the object being clearly to raise revenue.

The amusement business has been tapped as a source of revenue by many cities. A flat rate of one or two cents on each ticket may be levied, or a graduated tax based on the cost of admission may be used. License fees for mechanical amusement devices (pin-ball machines, juke boxes, etc.) are being levied in an increasing number of cities. Cities which license business generally collect such fees from amusement places. And in cities which have a selective license plan, the amusement business is one that is practically always selected for licensing.¹⁷

In the 1930's the first parking meters were installed by cities in this country. Their use has spread rapidly; approximately 450 cities are using them at the present time. While the parking meter is primarily a means of controlling parking in the congested areas of a city, it has also proved to be an easy means of raising revenue. The enforcement of parking regulations and the preventing of all-day parkers monopolizing street space in congested areas are made easier. Violations can be easily detected by the police because the meter dial shows when a car is parked beyond the time for which payment has been made. This is much simpler than the police practice of marking tires with chalk and returning at intervals to see if the cars have been moved within the allotted time. And in addition to simplifying the parking and traffic congestion problem, the meters provide a source of revenue.¹⁸

Service charges are now used for several municipal functions, but most frequently in connection with sewer service and garbage and refuse collection. Rather than finance these services out of the general tax revenues, a part or all of the cost is collected from the individual householder on the basis of the service rendered. This has been defended by some as a just and equitable means of financing city services. Since service charges are based on the benefit

¹⁷ *Ibid.*, chap. ii.

¹⁸ F. G. Baker and J. H. Nathanson, "Parking Meters as Revenues," 15 *Mun. Finance* 24 (Feb., 1943); A. M. Hillhouse and Muriel Magelssen, *op. cit.*, pp. 89-93.

principle rather than on ability to pay, they have been criticized by some as a poor source of revenue. Their increasing use may be explained and accounted for, not on the basis of their merits as a source of revenue, but because of the necessity of securing more money for the support of government and the fact that they constitute an untapped and productive source.¹⁹

Sales taxes have been or are being used in a few cities, the usual rate being 1 or 2 per cent. Among the larger cities which use a sales tax as a source of revenue are New York City, Philadelphia, Los Angeles, New Orleans, Atlantic City (N. J.), and Charleston and Huntington (W. Va.).²⁰ In some cities the tax is levied only upon certain items, most frequently on sales of gasoline, tobacco, soft drinks, and liquor. In 1946, about 25 cities were levying a cigarette tax of one or two cents per package. The sales tax has proved to be a good revenue producer that brings in needed money at once. The chief objection to it is that it is regressive, falling most heavily on the lower-income groups. This accounts for the organized opposition of labor organizations in some cities to proposals to levy a municipal sales tax.²¹

The income tax was adopted as a source of revenue by Philadelphia in 1940 and by Toledo and St. Louis in 1946. The Philadelphia tax applies to the salaries, wages, and commissions or other compensation of employees who are residents of the city, whether earned within or outside the city. In the case of non-residents, the tax is levied only on the income received for work done in the city. Rates are not graduated and there are no exemptions. The tax does not apply to corporations, but it does apply to unincorporated businesses and professions. Except in the case of state and federal employees, the employer makes a deduction from his employees' compensation and pays this to the city. Federal and state employees file their own returns and make their payments directly. During the first three

¹⁹ L. H. Schimmel, "Municipal Service Charges," 15 *Mun. Finance* 32 (Feb., 1943); Carl H. Chatters, "Analyzing the Local Revenue Problem," 28 *Pub. Management* 66 (Mar., 1946).

²⁰ See 28 *Pub. Management* 180 (June, 1946); 27 *ibid.* 186 (June, 1945); Almerindo Portfolio, "New York City's Sales Tax," 15 *Mun. Finance* 29 (Feb., 1943).

²¹ A. M. Hillhouse and Muriel Magelssen, *op. cit.*, p. 61.

years the rate of the tax was 1.5 per cent; it was then lowered to 1 per cent.²²

The Toledo payroll income tax which was adopted in January, 1946, applies to both individual and business earnings. City residents are taxed on all wages, salaries, commissions, and other earned compensation, and non-residents on such earnings in Toledo. Unincorporated businesses or professional activities are taxed on total net profits or, in the case of non-residents, on the part earned in Toledo. Corporations having an office or place of business in Toledo are taxed on the portion of their net profits derived from work done or services performed there. The rate of the tax is 1 per cent.²³

In July, 1946, St. Louis became the third city to adopt the income tax as a source of revenue. The tax was fixed at 0.25 of 1 per cent on the gross income of individuals and net earnings of corporations. As in Philadelphia and Toledo, the tax applies to all persons who earn salaries or commissions in the city, regardless of their residence.

It will be noted that the Philadelphia, Toledo, and St. Louis taxes afford a means of requiring "daylight citizens" to contribute to the support of the central core city in which they work and earn their livelihood. The suburban dweller who comes into the city and benefits from municipal services is by this means required to contribute to their support. The opinion has been expressed in a recent study that "this type of taxation by central cities may yet be the lever to bring suburban communities into the greater city corporations."²⁴

Profits from municipally owned utilities constitute a source of revenue in some cities. The rates are sufficiently high in these cities so that after meeting operating expenses, interest and debt requirements, and reserves for capital improvements, a surplus is left to be used for general municipal purposes. The objection to the practice is that it is an inequitable means of supporting government. The

²² On the Philadelphia tax, see Robert J. Patterson, "Philadelphia's Income Tax," 15 *Mun. Finance* 4 (Feb., 1943); Robert J. Patterson, "Philadelphia Tax in Fifth Year," 33 *Nat. Mun. Rev.* 452 (Oct., 1944); Edward W. Carter and Edward B. Shils, "Philadelphia's First Year of Earned Income Tax," 30 *ibid.* 482 (Aug., 1941); Edward W. Carter and Edward B. Shils, "Philadelphia's Earned Income Tax," 34 *Am. Pol. Sci. Rev.* 311 (April, 1940).

²³ Ronald E. Gregg, "Toledo Adopts Payroll Tax," 35 *Nat. Mun. Rev.* 108 (Mar., 1946).

²⁴ A. M. Hillhouse and Muriel Magelssen, *op. cit.*, p. 107.

difference in the amount of utility service used by the wealthy and the poorer classes is not great, and financing city services by profits of municipally owned utilities violates the principle of ability to pay. Where profits are used to pay for general municipal services, it is a form of taxation, and a poor one by the accepted standards.²⁵ Many agree that municipally owned utilities should pay the city an amount equal to the taxes it would receive if the utility were privately owned, but feel that beyond this, profits should be a basis for reducing rates and should not be used as a source of revenue to finance general municipal services.²⁶

A novel source of municipal revenue is found in South Dakota, where 97 municipal liquor stores were in operation in 1944. Some cities operate only off-sale stores, but others operate both on-sale and off-sale stores. Net profits ranged from 15 to 45 per cent.²⁷

SPECIAL ASSESSMENTS

Special assessments are charges levied against property owners to whom the function, service, or activity performed by the city renders special benefits. A street is paved, an ornamental lighting system is installed, a neighborhood park is acquired, all of which confer special benefits on some property owners; hence the argument is advanced that they should pay for the benefit. The special benefit increases the value of their property, and the special assessment provides a means of recouping this unearned increment to finance needed improvements, instead of issuing general bonds to be retired out of taxes paid by all the residents of the city. The justice of levying special assessments to cover the cost of improvements where there is a special benefit is generally accepted, even though it is not in accord with the principle of ability to pay.

The costs of more than fifty types of improvements or services have been met by special assessments. The most general use has been in

²⁵ See John Bauer, "Municipal Utilities: Profits vs. Taxes," 28 *Nat. Mun. Rev.* 626 (Sept., 1939); Louis Bartlett, "Tax-Free Cities," 23 *ibid.* 613 (Nov., 1934); W. S. Smith, "The Municipally Owned Utility: Profits or Service," 23 *ibid.* 616 (Nov., 1934).

²⁶ See 27 *Pub. Management* 114 (April, 1945).

²⁷ R. F. Patterson, "South Dakota Municipalities Tap Liquor Business for Profits," 33 *Nat. Mun. Rev.* 105 (Feb., 1944).

connection with streets—paving, widening, building curbs and gutters, cleaning, oiling, removing snow, and installing ornamental lights. Special assessments have also been used in many cases to acquire and maintain parks and playgrounds, and to construct sewers and water mains. While they may be used for both the capital outlay for the original construction and for maintenance, their use for the latter is much less frequent.²⁸

In the application of the special assessment principle, certain problems arise. One is the determination of the area that is specially benefited. In the case of a pavement, is it the abutters only or does it extend back a block or more? The same question arises in the case of a park, a subway, and other improvements financed by special assessments. The next question is to determine the amount of special benefit received by each piece of property. There are four general methods used for levying assessments. The first and most frequently used method is to spread the assessments on the abutting land in proportion to its frontage on the improvement. The second is the superficial area method, where the assessment is spread against abutting property in proportion to the area of the land fronting on the improvement. The third is the apportionment of assessments on the basis of the assessed valuation of the land benefited. The fourth method is to levy assessments on the proximity principle, the land nearer the improvement being assessed more in proportion to its superficial area or square footage than land farther removed from the improvement. This is thus a variation of the superficial area principle, proximity as well as area being considered.²⁹

A final problem in the use of special assessments is to determine the part of the cost of the improvement to be charged against the property specially benefited, and the part to be charged to the city and paid by all the taxpayers. A street or park may specially benefit abutters, but some benefits may also be derived by everyone living in the city.

²⁸ George A. Graham, *Special Assessments in Detroit*, pp. 13-14. Toledo, Ohio, in 1942 enacted an ordinance providing for the assessment of street-cleaning costs against property owners.

²⁹ Committee on Sources of Revenue, National Municipal League, 11 *Nat. Mun. Rev.* 43 (Feb., 1922); Charles M. Kneier, *Illustrative Materials in Municipal Government and Administration*, p. 320.

SHARED TAXES AND GRANTS-IN-AID

Cities receive substantial sums from state governments in the form of shared taxes or grants-in-aid.³⁰ In the case of shared taxes, a portion of the proceeds of a particular tax or taxes is distributed to local governments on the basis of some formula. Grants-in-aid, on the other hand, are usually made for specific purposes and on the basis of conditions to be met by the government receiving them.³¹ Grants-in-aid are made either to equalize the financial ability of the governments receiving them to provide services, or to serve as a stimulant for the performance of functions which the granting government is interested in, and desires to have performed. Rather than perform the function itself, it encourages other governments to do it by a conditional grant-in-aid.

A strong case can be made in support of the right of cities to receive a larger share of certain state-collected taxes. The states collect gasoline taxes and motor vehicle license fees; but the automobile has created new problems for cities and required the expenditure of money for traffic regulation—traffic lights and traffic policemen—and for streets over which these automobiles operate. The cities feel that they should share these revenues when the source is one which means added burdens for them. This view has been stated by the Municipal Finance Officers Association as follows: "Local governments should share more fully in certain state-collected revenues and the share should come to them as a right and not as a privilege. Specifically, the local governments should share more greatly in the revenues derived from the automobile since the municipalities to date have been forced to service the automobile from the local property tax without sharing substantially in the great volume of revenues derived from motor vehicle users."³² A similar argument

³⁰ On grants-in-aid as a means of state administrative control over local governments, see chap. vii.

³¹ Thomas H. Reed, *Federal State Local Fiscal Relations*, pp. 44-45; *Federal, State, and Local Government Fiscal Relations* (1941), p. 159.

³² "Local Government Fiscal Policies," 26 *Pub. Management* 258 (Sept., 1944). This statement was adopted by the executive board of the Municipal Finance Officers Association. Also see Finla G. Crawford, *The Gasoline Tax in the United States* (1937), chap. vii. Among the taxes which are shared most frequently with local governments are gasoline taxes, sales taxes, cigarette and liquor taxes, and automobile license fees. Some states having a state liquor monopoly now distribute part of the profits to the cities.

can be made relative to state-collected liquor revenues. The enforcement problems resulting from the sale of liquor must be met by cities.

Another argument that can be made for greater use of the shared tax principle is that it will permit municipal services to be supported by more equitable taxes, since they are administratively feasible on a state or national but not on a municipal basis. Despite Philadelphia's experience and the action taken by Toledo and St. Louis in 1946, it is generally accepted that the city is not the most desirable unit for levying an income tax; the experience of New York City in levying an inheritance tax illustrates the administrative difficulties with this tax levied on a city basis.³³ Insofar as these taxes are more equitable than the property tax, and consequently more desirable as a source of municipal revenue, the solution appears to be to have them levied by the state or federal government and shared with the cities.

Grants-in-aid may be used to encourage or stimulate local governments to perform services. By a grant-in-aid for libraries, venereal disease clinics, or municipal hospitals, the state can encourage cities to develop programs in these fields. The grant-in-aid can also be used to assist taxing units with a low property valuation and poor revenue-raising ability. A formula is made by which the grants are given on the basis of need. The wealthier sections of the state thus assume part of the burden for the performance of governmental services in the poorer sections.

The increased use of grants-in-aid and shared taxes has been a result of necessity as well as of choice. Cities have not had adequate sources of revenue to enable them to provide essential services. As stated by Thomas H. Reed, "The truth is that under existing circumstances almost all units of local government in the United States are incapable of complete support." After pointing out that the only major source of independent tax revenue suited to local administration is the general property tax, since the other dependable and large tax sources either are preempted by the state and national governments (e.g., the income tax) or are not adapted to local uses because

³³ An inheritance tax equal to 40 per cent of the state inheritance tax was levied by New York City in 1934. The ordinance levying the tax was later repealed and all the amounts collected were refunded to those who had paid the tax. 15 *Mun. Finance* 29 (Feb., 1943).

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of problems of administration (e.g., the sales tax), he says: "There is in short nowhere else for local governments to look for any considerable addition to their income except to participation in the proceeds of taxes laid and collected by their senior partners in the business of government."³⁴

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³⁴ Thomas H. Reed, *op. cit.*, p. 43.

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Municipal Indebtedness

The American city which has no indebtedness is the exception rather than the rule.¹ As will be pointed out later in the chapter, the pay-as-you-go principle has received increased emphasis in recent years, and the number of debt-free cities has increased. Carl H. Chatters, former executive director of the Municipal Finance Officers Association, wrote in 1944 that "more and more communities during the year have expressed interest in laying financial plans so that they will be free from debt in the future by paying off present debts and financing future improvements from current income."² The movement received impetus during World War II when several cities which had to curtail their construction programs built up reserves to undertake such work when men and materials were again available. By 1943, 21 states had passed laws authorizing cities to build up such funds. The purpose was to "eliminate borrowing through long-term debt for capital improvements or deferred maintenance" in the postwar years.³

Cities frequently borrow for short periods of time in anticipation of the collection of taxes. This type of borrowing may be the result

¹ Statistical data on municipal debts have not been included in this discussion because the amounts change each year. For such current data, consult the *Municipal Year Book*, published annually by the International City Managers' Association. See also the following publications of the Bureau of the Census: *City Finances: 1943* (Government Printing Office, 1945); *Governmental Finances in the United States: 1942* (Government Printing Office, 1945); *City Debt in 1944* (Government Printing Office, 1946).

² *Municipal Year Book*, 1945, p. 190; *ibid.*, 1946, p. 174. Also see Lloyd Gladfelter, "Milwaukee Goes Debt Free," 33 *Nat. Mun. Rev.* 391 (Sept., 1944); "Debt-Free Cities and Pay-As-You-Go Financing," 28 *Pub. Management* 272 (Sept., 1946).

³ *Municipal Year Book*, 1944, p. 235.

of an unforeseen emergency which is not provided for in the budget, but more frequently it is the result of poor financial planning and bad judgment regarding anticipated revenues.⁴ The failure to start tax collections at the beginning of the fiscal year is also a reason why cities are forced to borrow for short-term periods. Tax delinquency is another cause. Temporary borrowing is thus a means of tiding the city over until taxes are due and collected.

Municipal governments have in recent years made less use of the practice of temporary borrowing, and for this they should be commended. Unforeseen economic conditions and emergencies which arise may make temporary borrowing necessary, but good financial planning and practices should keep it at a minimum.

The more important type of municipal borrowing, and the one with which the discussion which follows is primarily concerned, is long-term bonded indebtedness. This type of indebtedness is usually incurred only for permanent improvements, but unfortunately some cities have resorted to it to meet current operating costs. This is considered poor practice and is condemned by authorities in the field of municipal finance. During World War II the debt of American cities showed a marked reduction as a result of the inability of local governments to undertake improvements because of war restrictions.⁵ As delayed construction programs are carried out in the postwar period, we may expect an increase in municipal debts.

STATE LIMITATIONS UPON MUNICIPAL INDEBTEDNESS

By constitutional or statutory provision, the amount of debt cities may incur has been limited in all our states. These state limits had their origin in the rapid extension of municipal indebtedness in the period following 1850. Cities borrowed money in order to subscribe to railroad stock so as to secure the building of the road through the city; having visions of future greatness, they borrowed for paving, sewers, water supply, and other services out of all proportion to their needs. Their psychology and behavior were similar to those of cities

⁴ Carl H. Chatters and A. M. Hillhouse, *Local Government Debt Administration*, chap. v, entitled "Short-Term Borrowing and Funding."

⁵ Rosina Mohaupt, "Bonded Debt of 290 U. S. Cities as at January 1, 1943," 32 *Nat. Mun. Rev.* 303 (June, 1943).

in the period before the economic crash of 1929. The total local debt in this country amounted to only \$27,500,000 in 1843, but by 1860 it had increased to \$200,000,000. In New York the total indebtedness of cities increased until it equaled 10 per cent of the assessed valuation, and in New Jersey it was 11 per cent; "many cities issued bonds in excess of 25 per cent, and some even in excess of 100 per cent of their assessed values."⁶

The economic depression of 1873 and 1874 caused the bubble of municipal borrowing to burst. There was a realization that municipal borrowing had advanced to a point where it could not be justified. To check municipal extravagance and the incurring of greater indebtedness, constitutional and statutory limits on the total amount of municipal debt were provided. Iowa, in 1857, was the first state to place a constitutional debt limit on cities.⁷ Since that time there has been a rapid extension of the limitation of municipal debts by state constitutional or statutory provision. Nineteen states now impose a debt limit of 5 per cent or less of the assessed valuation. Two states place the limit at above 10 per cent.⁸ Fifteen states place the limit at between 5 and 10 per cent. In the states where no constitutional limitation of municipal indebtedness is provided, statutory provisions of a similar character are usually found.⁹

Some states now authorize the incurring of debts beyond the ordinary limit for certain public improvements such as waterworks and other revenue-producing utilities. Such additional loans are now authorized in about 20 states, most commonly for waterworks and lighting plants. Popular approval by the electorate is frequently required before a city may incur any bonded indebtedness. In most cases this is limited to the issuing of bonds for certain purposes, or to the exceeding of the bonded indebtedness limit.

Limiting the bonded indebtedness of cities on the basis of the assessed valuation of property is not satisfactory. It provides a

⁶ E. Blythe Stason, "State Administrative Supervision of Municipal Indebtedness," 30 *Mich. Law Rev.* 833 (Apr., 1932); Paul Studenski, *Public Borrowing*, chap. i; E. S. Griffith, *Modern Development of City Government*, vol. 1, pp. 62 ff.

⁷ H. L. McBain, *The Law and the Practice of Municipal Home Rule*, p. 53.

⁸ South Carolina, 15 per cent; and Virginia 18 per cent.

⁹ E. Blythe Stason, *op. cit.* Also see Lane Lancaster, *State Supervision of Municipal Indebtedness*; H. Secrist, *An Economic Analysis of the Constitutional Restrictions upon Public Indebtedness in the United States*.

simple means by which the solvency of a city can be protected by limiting the debt to a percentage of the assets—the property on which taxes can be levied to pay the debt. In practice, however, this method of limiting debt has disclosed its weaknesses. Cities have in some cases increased the assessed valuation of property in order to issue bonds and still stay within the constitutional limitation. Another weakness may be illustrated by the constitutional provision in Illinois and the experience in that state. The constitution provides that “no county, city, township, school district or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount including existing indebtedness in the aggregate exceeding five per centum on the value of the taxable property therein.” It is to be noted that in addition to the enumerated units of government, any “other municipal corporation” may become indebted to 5 per cent of the assessed value of the property therein. Special districts which come under the category of “other municipal corporations” may incur debts to this limit. With the various layers of government (county, township, city, school district, and several types of special districts) operating over the same territory, the 5 per cent debt limit becomes meaningless.

A debt limit based on the assessed valuation of property is also unsatisfactory because it does not take into consideration the purpose for which the debt is incurred. If the debt is incurred for a revenue-producing utility which will be self-supporting, then the limit should be higher than for debts which must be retired out of taxes. Some states meet this situation by making an exception for debts incurred for the acquisition of public utilities. Other states meet the situation, and in a sense evade the constitutional limitation, by issuing bonds which are a claim on the utility earnings only and are not general city obligations. The courts have generally construed such debts not to be “municipal debts” and therefore not within the constitutional limitation.¹⁰

Requiring approval by the electorate before the city incurs indebtedness does not insure that the city's credit will be protected. The

¹⁰ On the various methods used to evade municipal debt limits in acquiring municipally owned utilities, see Lawrence L. Durisch, “Municipal Debt Limits and the Financing of Publicly Owned Utilities,” 20 *Nat. Mun. Rev.* 460 (Aug., 1931).

financial picture of the city is often too complex to be presented adequately to the electorate so they can make an intelligent appraisal of the situation in determining whether an improvement shall be undertaken and bonds issued to finance it. Paul Studenski has referred to the referendum on bond issues as a "clumsy device," saying: "It leads to the decision of the question, whether bonds should be issued, by political manipulation or accident rather than by consideration of what is a sound financial policy. . . . The problems of fiscal policy involved in bond proposals are too complicated for a 'yes' or 'no' answer."¹¹

Constitutional and statutory debt limits based on the assessed valuation of property are, as pointed out above, arbitrary in that they do not take into consideration the purpose for which the debt is incurred. They have also been criticized as being unrealistic and illogical on the grounds that while assessed value is indicative of the wealth of the community and is some indication of its tax-paying and debt-paying ability, it is not a sufficient or conclusive indication. Among other factors which should be considered are the rate of growth of the city, its economic stability, and the rate of civic and governmental progress.¹²

To secure the needed flexibility in municipal indebtedness and at the same time assure the solvency of the municipality and protect the property owner against unreasonable burdens, administrative supervision and control by a state agency of the incurring of debts by cities has been proposed and is now used in a few states.¹³ The state agency would consider the purpose for which the debt was incurred, the existing debt of the unit seeking to issue the bonds, and the outstanding debt of other overlapping units of government. This principle has been used in Indiana for several years and has now spread to North Carolina and a few other states.¹⁴

¹¹ Paul Studenski, *op. cit.*, p. 62.

¹² *Ibid.*, p. 61. Mr. Studenski has an excellent analysis of this point.

¹³ The Indiana and North Carolina plans of administrative control over municipal indebtedness have been discussed in chap. vii.

¹⁴ Wylie Kilpatrick, *State Supervision of Local Finance*, p. 37. On the Indiana plan, see Observer, "Has the Indiana Plan Been a Success?" 21 *Nat. Mun. Rev.* 101 (Feb., 1932); Philip Zoercher, "Regarding the Indiana Tax Plan—A Reply to 'Observer,'" 21 *ibid.* 309 (May, 1932); James W. Fesler, "North Carolina's Local Government Commission," 30 *ibid.* 327. Also see B. U. Ratchford, "The Work of the North Carolina Local Government Commission," 25 *ibid.* 323 (June, 1936).

Municipal officials and state municipal leagues have generally opposed state administrative control of local government debts. They look upon it as a further encroachment upon municipal powers of self-government and see no reason to believe that a state agency can better decide whether a debt should be incurred than the officials or the people of the city. It seems, however, that if the members of the state commission approach their work in a spirit of co-operation and helpfulness rather than with a dictatorial attitude, the principle of administrative control of municipal debts should prove successful. Its success in North Carolina is in part the result of the commission's attitude; it has considered local public opinion and has avoided antagonizing public officials.¹⁵

TYPES OF BONDS

Municipal bonds may be classified in various ways. One method of classification is based on whether they are registered or coupon bonds.¹⁶ In the case of registered bonds, a record or register is kept by the city showing the name and address of the owner, and interest payments are sent to him regularly. If he wants to sell the bond, he endorses it over to the purchaser, who then sends it to the city, which changes its records and sends him a new bond made out in his name. Coupon bonds, on the other hand, may be transferred by mere physical delivery. They have coupons attached to them which are clipped and sent to the city; and it then sends a check to cover the interest due. The purchaser has better protection in case of the theft or loss of registered bonds than if he owns coupon bonds.

Another classification of bonds, in this case based on the method provided for paying off the indebtedness, is sinking fund and serial bonds. Sinking fund or term bonds are all retired at the end of a definite stated period and money is set aside in a sinking fund so it will be available for this purpose at the expiration of the period when the principal is due.¹⁷ In the case of serial bonds, part of the principal is retired each year. The serial bond is simpler for the city since there are no sinking funds to be administered, and some weak-

¹⁵ James W. Fesler, *op. cit.*

¹⁶ Thomas H. Reed, *Municipal Management*, p. 208; Carl H. Chatters and A. M. Hillhouse, *op. cit.*, chap. iv.

¹⁷ On sinking fund administration, see *ibid.*, chap. v.

nesses which have appeared in their administration can be avoided. In too many cases where the sinking fund type of bond is used, the maturity date arrives for an issue and the funds available to meet it are inadequate. This is usually the result of poor fiscal planning, but in some cases the administration has deliberately levied taxes which were inadequate to meet both operating costs and sinking fund requirements. It is poor financial administration, but it is a way of currying favor with the taxpaying electorate. The serial bond requires the administration regularly and faithfully to provide for the retirement of the city's debt, for if it fails to do so the fact is promptly brought to light when the bondholders fail to receive their money on the serials falling due that year.¹⁸

Authorities in the field of municipal finance favor the serial type of bond. In their study, *Local Government Debt Administration*, Chatters and Hillhouse take the following position: "The most certain means of assuring a consistent policy in the retirement of debt is by the serial payment method. The process is regularized. For the vast majority of local governments, the sinking fund bond is unwise. Only the large municipalities are equipped to administer sinking funds efficiently."¹⁹ This is sound advice and should be followed. The trend has been definitely toward serial bonds.

Municipal bonds may be issued which are not general obligations of the city but have a limited security behind them.²⁰ This is illustrated by special assessment bonds and revenue bonds. In the case of special assessments for financing local improvements two types of bonds are used—"general-specials" and "special-specials." The former is a general obligation of the city; and if assessment collections from the benefited property are not adequate to meet interest and principal obligations as they fall due, they become a charge against the municipality. A special-special is not an obligation of the city but is a charge only against the special assessment money collected, or against the property benefited by the improvement for which the bonds were issued. The city's responsibility to the bondholders in the case of the special-special ends when it uses reasonable care in making collections of special assessments and sees that

¹⁸ Thomas H. Reed, *op. cit.*, p. 215.

¹⁹ Carl H. Chatters and A. M. Hillhouse, *op. cit.*, pp. 17-18.

²⁰ On limited security municipal bonds, see *ibid.*, chaps. vii-viii.

the funds so collected are applied to the payment of interest and principal on the special assessment bonds.

There are also two types of bonds issued by cities to secure funds to acquire public utilities. They may issue general obligation bonds behind which are the full credit and tax resources of the city. Or they may issue revenue bonds, which are payable only out of the revenues of the utility, and which are not obligations to be met out of tax revenues even though utility earnings are inadequate to meet interest and principal payments.

The limited security bonds, such as the limited obligation special assessment bonds and the utility revenue bonds, are less attractive to investors than general municipal bonds and consequently require the payment of higher interest rates. There is thus a disadvantage because there is a higher cost to the taxpayer. In some cases, however, it is necessary to use them to stay within constitutional debt limits.

Another question to be met by cities in issuing bonds is the period for which they should be issued. They should be issued for a period less than the life of the improvement—all of them should be retired before the street, the police station, or the fire truck is worn out.²¹ If not, there is a tendency for the debt to accumulate or pile up. Taxpayers at a later date are paying for improvements used and enjoyed by taxpayers of an earlier period who should have paid for them. City administrations have proved to be poor judges as to the life of improvements—probably deliberately, to keep down present tax rates and convince the taxpayers that the new improvement is not much of a burden. To meet this situation, the legislatures of several states have limited the period for which bonds may be issued; this varies with the type of improvement. The object is to prevent the piling up, accumulation, or pyramiding of debt.²²

A practice followed by some cities, and a desirable one, is for the city, by a provision in the bonds, to reserve the right to call them before maturity. Usually this can be done only after the expiration of a stated number of years and at prices slightly above par. The object is to enable the city to refund in case of a drop in interest

²¹ See Paul Studenski, *op cit.*, p. 86.

²² Paul Studenski, "Fiscal Aspects of Serial Bonds," 25 *Nat. Mun. Rev.* 337 (June, 1936).

rates, by issuing new bonds carrying a lower rate. The call feature is especially desirable in bonds issued during periods when high interest rates prevail. Unless the period during which the bonds may not be called is fairly extensive, such as ten or fifteen years, the call feature may lead to a higher rate of interest. The insertion of a premium call price also lessens the tendency for callable bonds to require a higher interest rate.²³

In connection with the date of maturity of municipal bonds, the suggestion has been made that bonds carry a provision "permitting the municipality in the case of a severe economic crisis or other national emergency to refund its maturing bonds into new bonds, provided such new bonds bear a slightly higher rate of interest and run for not more than say, five years."²⁴ This would enable the municipality to avoid a default in such cases and to reorganize its finances so that it can meet its obligations. It would merely be an agreement to give the city a "little time" if unusual economic conditions arose which made it impossible to meet its obligations.

PAY-AS-YOU-GO PRINCIPLE

Advocates of the pay-as-you-go principle in municipal government take the view that cities should abandon borrowing and pay all costs, even for permanent improvements, out of current taxes. They point to the amount of interest paid on a long-term bond issue and the amount by which this increases the cost of an improvement. If a city borrows for twenty years at 3 per cent interest, this means \$600 interest paid on every \$1000 bond issued, or an increase of 60 per cent in the cost of the improvement. By paying cash for the improvement out of current revenues, the 60 per cent can be saved. This is the main argument for the pay-as-you-go principle. Another argument advanced in its support is that public officials and citizens will be less extravagant if the cost of improvements is brought home to them at once. As stated by Chatters and Hillhouse, "Spending officials and taxpayers are more deliberate about acquiring improve-

²³ See Municipal Finance Officers Association, *The Call Feature in Municipal Bonds* (1938), for an authoritative study on the various aspects of the call feature in municipal bonds.

²⁴ Paul Studenski, "Fiscal Aspects of Serial Bonds," p. 340.

ments of doubtful necessity when the cost has to be met immediately. Individual projects are undertaken on a more economical basis for the same reason. Construction of unnecessary improvements is deterred when proponents of such improvements are compelled to justify an increase in the tax rate at the time they advocate such expenditures. The tendency, therefore, probably will be to spend less, but to spend more wisely."²⁵ The same principle is apparent in the individual who shows less wisdom in his purchases when he has a charge account or buys on the installment plan than when he pays cash. "Laying down the cash" for the article desired has a sobering influence in the buying of services and goods, both on private individuals and on organized communities.

In the larger cities, proper planning makes it possible to spread out capital improvements, undertaking some new project each year. This levels the burden and makes the application of the pay-as-you-go principle more feasible. The difficulty in smaller cities is that paying for improvements at the time they are constructed results in a great fluctuation in the tax rate, because even by planning, the construction of capital improvements cannot be evenly spread. The tax rate becomes inordinately high in years when new improvements are undertaken, such as a city hall or school, and the taxpayer may find the burden more than he can bear if payment is made out of current taxes.

Some cities have tried to avoid borrowing by building up a reserve fund to be used in constructing permanent improvements for which borrowing would otherwise be necessary. As pointed out earlier in this chapter, several cities built up such funds during World War II so as to eliminate borrowing for capital improvements in the postwar years when material for construction purposes again became available. Here arises the problem of investing these reserve funds until they are needed, and in this, city officials have not always proved efficient. Although under this plan the taxpayer does not pay interest on bonded indebtedness incurred for an improvement, he does lose the use of his money while it is in the reserve fund, a period during which he is not enjoying the public improvement. Finally, there is always pressure from taxpayers—especially organized groups—to reduce taxes; hence building up a

²⁵ Carl H. Chatters and A. M. Hillhouse, *op. cit.*, pp. 378-380.

fund for constructing future public works requires courage on the part of the administration.²⁶

Much of the discussion of the pay-as-you-go principle assumes that it is a question either of borrowing or of paying cash out of current taxes for permanent improvements. A combination of the two methods, a compromise rather than either extreme, has been suggested as a solution of the problem.²⁷ Chatters and Hillhouse point out that "a partial pay-as-you-go plan may prove workable whereas a complete pay-as-you-go plan may be impractical." A fairly level charge each year for capital improvements, which experience shows recur each year, would be paid out of current revenues. "On the other hand," under this plan, "if the amount of necessary capital expenditures in a given year far exceeds the average expended for recurring amounts of capital outlays in preceding years, the city properly may issue bonds to cover the excess."²⁸

Municipal borrowing will continue as a necessary practice for most cities. Because of limitations on the applicability of the pay-as-you-go principle, as in small cities where the irregularity and non-recurrent nature of expenditures for capital improvements cannot be avoided even by planning, and for unusually large expenditures in all cities, use of borrowing to secure funds will continue to be made. While the number of debt-free cities is increasing, it appears to be a goal which many will not attain.

MUNICIPAL DEFAULTS

Although the record of American cities in paying their debts has been excellent, there have been defaults. The first period in which several cities defaulted was between 1840 and 1860, among them being Chicago, Detroit, and Philadelphia.²⁹ Following the Civil War also, several cities defaulted on their bonds. Finally, after World War I and especially in the depression years of the 1930's municipal defaults again appeared. Between 1932 and 1936 the number of

²⁶ See editorial entitled "Tax Reduction vs. Reserves," 24 *Pub. Management* 353 (Dec., 1942).

²⁷ See Paul Studenski, *Public Borrowing*, pp. 67-68, 123-124, for a statement of this principle.

²⁸ Carl H. Chatters and A. M. Hillhouse, *op. cit.*, pp. 377-378.

²⁹ Paul Studenski, *Public Borrowing*, p. 43.

municipal bond defaults increased from 678 to 3159.³⁰ Revenues were reduced because of people's inability to pay taxes, and the burden to be borne by city governments increased as a result of the welfare and relief problems caused by unemployment. The difficulty was a result in large part of the reliance by cities on the real property tax. There was not sufficient financial flexibility to meet the new needs. The states had in many cases taken for their own use the most satisfactory sources of revenue and had refused to open up new tax sources to the cities. The loan and credit facilities of the national government helped many cities, but in the case of those most seriously in distress, the federal help was not sufficient. By 1933, only seven states had no subdivisions in default.

Experience has shown that in case of default, the legal remedies available to the holders of municipal securities are generally inadequate. Remedies which can be used against a private debtor are not available against a municipal corporation. Resort to the courts by creditors of municipal corporations has proved ineffective in securing payment in cases of default on bonds.³¹

In some cases when cities have not been able to meet their bond obligations, bondholders have agreed to a settlement under which part of the obligation is canceled and the city pays the remainder.³² Where cities have succumbed to economic conditions beyond their control and have made an honest and sincere effort to meet their obligations, the majority of their creditors have appreciated the situation and have been willing to cooperate, especially as to the postponing of maturities and even a reduction in interest. Experience has showed, however, that there is usually a small minority who demand full prompt payment and are unwilling to accept less. This has been the stumbling block in most voluntary plans of debt adjustment. It means that the other creditors agree to immediate full

³⁰ A. M. Hillhouse, *Municipal Bonds*, p. 19. Also see Sanders Shanks, Jr., "Municipal Bond Defaults," 26 *Nat. Mun. Rev.* 296 (June, 1937).

³¹ See A. M. Hillhouse, *op. cit.*, chap. x, entitled "Creditors' Remedies," for a consideration of the various remedies and their effectiveness. Also see J. B. Fordham, "Methods of Enforcing Obligations of Public Corporations," 33 *Columbia Law Rev.* 28 (Jan., 1933); H. Howard Hassard, "Rights of Public Corporation Bondholders to Fund Insufficient to Meet Due Interest or Principal Payments," 21 *California Law Rev.* 161 (Jan., 1933).

³² See A. M. Hillhouse, *op. cit.*, chap. xii, entitled "Debt Adjustments"; Carl H. Chatters and A. M. Hillhouse, *op. cit.*, chap. xi.

payment to a few recalcitrant and uncooperative individuals, or the whole plan collapses. The states lacked the legal power to help the cities meet the problem, the Constitution of the United States providing that "no state shall pass any law impairing the obligation of contracts." State legislation providing for the composition of municipal debts would impair the obligation of the bondholder's contract with the city.

Congress attempted to meet this problem in 1934 by amending the Bankruptcy Act to provide "for the emergency temporary aid of insolvent public debtors." The Municipal Debt Adjustment Act of 1934 provided that any taxing district which was insolvent or unable to meet its debts as they matured could file a petition in a court of bankruptcy, stating that it desired to work out a plan of readjustment of its debts. Before the petition was filed, it was necessary that the plan of debt readjustment be prepared and approved by a stated percentage of the creditors of the taxing district (51 per cent for cities). If the judge was satisfied that the plan was fair, equitable, and for the best interests of the creditors, it was to be confirmed by him; but such confirmation could be given only after the plan had been accepted by creditors holding a stated percentage of the claims (75 per cent in the case of cities). When finally confirmed, it was binding upon the taxing district and all creditors.

The Supreme Court declared the act unconstitutional in 1936 on the grounds that it was an interference by the national government with the rights of the states over their local units.³³ Although the consent of the state was required by the act before the debts of a city could be adjusted, the court held that this was inadequate; "neither consent nor submission by the States can enlarge the powers of Congress." If the obligations of the political subdivisions of states could be subjected to the "interference here attempted, they are no longer free to manage their own affairs." The second ground on which the act was held unconstitutional was that it permitted state impairment of a contractual obligation. As the state

³³ Ashton v. Cameron County Water Improvement District, 298 U. S. 513, 80 Law. Ed. 1309 (1936). For the opinion of the court, see Charles M. Kneier, *Illustrative Materials in Municipal Government and Administration*, pp. 346-349. Also see A. M. Hillhouse, "The Federal Municipal Debt Adjustment Act," 25 *Nat. Mun. Rev.* 328 (June, 1936); Wylie Kilpatrick, "Federal Regulation of Local Debt," 26 *ibid.* 283 (June, 1937).

could not impair the obligation of contract directly, neither could it do it indirectly. As stated by the court, "Nor do we think she [the state] can accomplish the same end [impairment of the obligation of contract] by granting any permission necessary to enable Congress so to do."

In 1937 Congress enacted a new amendment to the Bankruptcy Act to take the place of the act of 1934, in which an attempt was made to meet the objections of the Supreme Court to the earlier act. The constitutionality of this second act was upheld by the Supreme Court in 1938.³⁴ The Court pointed out that the states were not able to provide a method for the composition of debts of local governments because of the restriction in the federal Constitution upon the impairment of contract by state legislation. The bankruptcy power of the national government was competent to meet the problem, the only possible objection being that it constituted federal interference and was therefore in derogation of the sovereign powers of a state. The Court held that state sovereignty had not been invaded, pointing out that only the local government could seek the benefits of the statute and that no involuntary proceedings were permitted. In the case before the Court, the state had specifically given its consent by statute for the local government to seek debt adjustment under the act. Since the states could not provide a debt adjustment plan for cities because of the limitation on the impairment of the obligation of contracts, unless the national government could act under the bankruptcy clause there was no way to provide relief for local governments where "economic disaster had made it impossible for them to meet their obligations." The Court wanted to avoid that situation, saying, "It [the state] invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue. Through its cooperation with the national government the needed relief is given. We see no ground for the conclusion that the Federal Constitution, in the interest of State sovereignty, has reduced both sovereigns to helplessness in such a case." After 150 years the bankruptcy provision of the federal Constitution was thus used to help municipalities in financial difficulties.

³⁴ *United States v. Bekins*, 304 U. S. 27, 58 Sup. Ct. 811 (1938). Changes in the personnel of the Court account in part for the change in attitude. For the opinion of the Court, see Charles M. Kneier, *op. cit.*, pp. 349-353.

The cooperation of the national government through its power to pass bankruptcy legislation, and of the states through their power over local governments, has provided a solution for a troublesome problem. The number of cities taking advantage of the act has not been great; but the threat of its use has been effective in the case of recalcitrant creditors. The act of 1937 expired in 1940 but has been extended and amended by subsequent acts.

The present law provides that a city, as well as other enumerated units of local government, may file a petition in a court of bankruptcy (United States District Court) stating that it is unable to meet its debts as they mature and that it desires to work out a plan for the composition of its debts.³⁵ A plan for debt composition which has been approved in writing by owners of 51 per cent in amount of the securities affected must be submitted to the court. If the court, after a hearing on the petition, finds that the proposed composition is fair, equitable, and for the best interests of the creditors, it will confirm the plan, provided it has been accepted in writing by two-thirds of the aggregate amount of all claims affected. The act applies not only to general municipal obligations but also to bonds payable out of special assessments or special taxes, and to bonds payable out of revenues from revenue-producing enterprises.

STATE RECEIVERSHIPS

The default of a few cities in a state affects the credit of every city in that state. The word of default soon spreads, and buyers of municipal bonds avoid the offerings of other cities in that state, regardless of their soundness. Other cities thus pay the penalty, in higher interests rates, for the sins of some of their number in defaulting. The defaults which have occurred may be accounted for by a particular local situation, but purchasers of municipal bonds do not appear to be so discriminating as to study individual cases and records. It is for this reason that states have taken an increasing interest in and assumed an added responsibility for preventing defaults. During the depression years of the 1930's, when an increasing number of cities were defaulting, several state legislatures

³⁵ Public Law 481, 79th Congress, approved by the President on July 1, 1946.

enacted legislation providing for a temporary receivership of defaulting municipalities.

A State Municipal Finance Commission was established in North Carolina in 1931. The Commission was authorized to function in any city which defaulted for over sixty days in the payment of bonds, upon application of a note- or bond-holder and by order of a justice of the Supreme Court, or on petition of the governing body of the city stating its inability to meet its debts when due. In 1938 this power was transferred from the Municipal Finance Commission to the State Local Government Board. An Oregon statute of 1933 authorized the circuit court of the county in which a municipal corporation is situated to appoint a municipal administrator to take over its fiscal affairs in case of default in paying interest or principal for six months or more. The receivership principle, exercised either by a state agency or by a receiver appointed by the courts, has been used in other states.³⁶

FEDERAL TAXATION OF INCOME DERIVED FROM MUNICIPAL BONDS

The proposal has been made that the interest received by owners of state and municipal bonds be subject to the federal income tax, and that states and their subdivisions be permitted to tax the income derived from federal bonds. President Franklin D. Roosevelt favored such a plan, and in recent years bills have been introduced into Congress to provide for reciprocal taxation of the income derived from government securities. As yet they have not been enacted. These proposals and their effect upon the municipal borrowing power have been discussed in an earlier chapter dealing with federal-city relations.³⁷

³⁶ Arnold Frye, "State Receivership of Insolvent Municipal Corporations," 25 *Nat. Mun. Rev.* 319 (June, 1936); A. M. Hillhouse, *Municipal Bonds*, pp. 312-316.

³⁷ See chap. viii, section on "Intergovernmental Tax Exemption."

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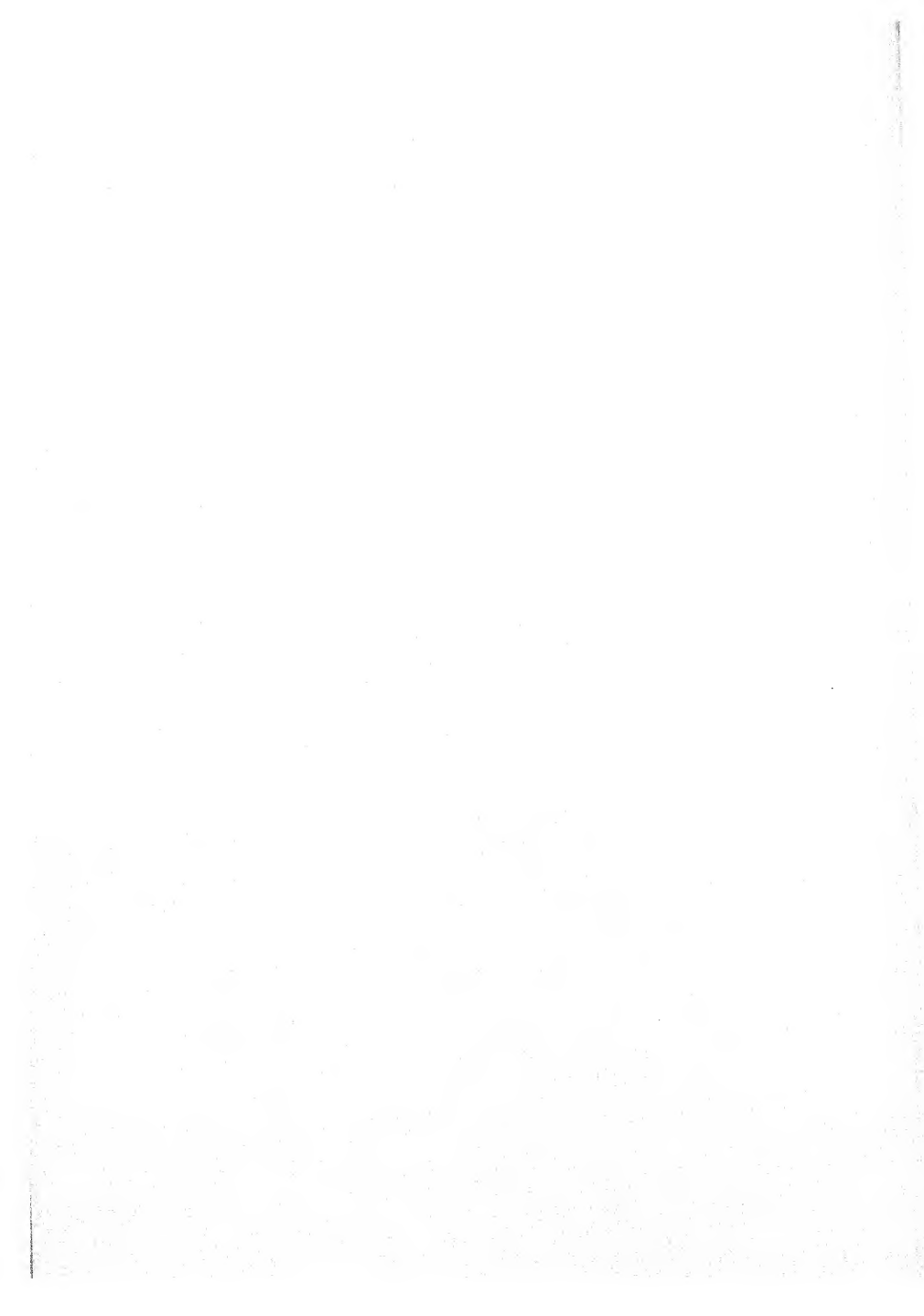
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